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Chapter 3: Ensuring 'Appropriate Protections for Young Suspects: Country Report England and Wales

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1. THE JUVENILE JUSTICE SYSTEM IN ENGLAND AND WALES: GENERAL OVERVIEW

A. Background

General characteristics of the system

The juvenile justice system in England and Wales has emerged on an *ad hoc* basis over the past hundred years, growing out of the adversarial criminal justice system more generally. While the 1908 *Children Act* established the principle of dealing with juveniles separately from adults, over time there have been different approaches adopted to the problem of young people and crime. Within the contemporary system, referred to as the 'youth justice system', there is a specialist criminal court which deals with defendants aged under 18 years but there is no separate system of justice for juveniles. Instead, the law relating to children and young persons in the criminal justice system is based on an adaption of the rules that apply to adults.

The main sources of law and principles dealing with youth justice and the criminal justice system comprise statute, procedural rules and international standards – including the European Convention on Human Rights (hereafter: ECHR) – and EU law.¹ There are also civil law interventions available in relation to the offending behaviour of juveniles.

Statute

While there is the specialist youth court dealing with defendants aged under 18 years, the law relating to children and young people is not to be found in one statute; instead a series of statutes are relevant. The most important pieces of legislation which changed the rules in relation to juveniles are the Children and Young Persons Acts of 1908, 1933, 1963 and 1969, together with the Bail Act 1976, Magistrates' Courts Act 1980, Police and Criminal Evidence Act 1984, Prosecution of Offences Act 1985, Criminal Justice and Public Order Act 1994, Crime and Disorder Act 1998, Powers of Criminal Courts (Sentencing) Act 2000, Anti-Social Behaviour Act 2003, Criminal Justice Act 2003 and the Legal Aid Sentencing and Punishment of Offenders Act 2012.

Procedural rules

The Criminal Procedural Rules 2005 established an overriding objective of the criminal justice process, which is that criminal cases should be dealt with justly. This includes, amongst other things, recognising the rights of a defendant, particularly those under art. 6

¹ The common law is also an important source of criminal law, but not specifically concerning juveniles.

ECHR. Other rights include acquitting the innocent and convicting the guilty, dealing with the prosecution and defence fairly and dealing with cases efficiently and expeditiously.²

International Standards

In England and Wales there are various international standards that apply to children and young people drawn into the criminal justice system. The European Convention on Human Rights, for example, was ratified by the United Kingdom in 1951 and the United Nations Convention on the Rights of the Child (hereafter: UNCRC) was ratified in 1990. This means that relevant legislation and practice in the criminal justice system needs to conform to the principles set out in these two Conventions. In addition, under the Human Rights Act 1998 it is unlawful for any public authority, including a court, to act in a manner which is incompatible with a Convention right.

There are other standards for children and young people involved in the youth justice system, which have been adopted by the United Nations (hereafter: UN). These include the UN Standard Minimum Rules for the Administration of Juvenile Justice (1985: 'the Beijing Rules'); the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990: 'the Havana Rules'); and the UN Guidelines for the Administration of Juvenile Delinquency (1990: 'the Riyadh Guidelines'). As found more generally within the youth justice system, however, there are tensions within these Conventions due to the potential for conflict between 'just deserts' and 'welfarist' imperatives.³

The UNCRC is the most ratified of all international human rights instruments, but without sanctions being imposed for breaches of those rights, it has also been found to be the most violated. In England and Wales, for example, the UN Committee on the Rights of the Child (2008) have highlighted many failings, particularly over the low age of criminal responsibility (at 10 years) and for using the youth justice system to target non-criminal behaviour and other social problems.⁴ There have also been concerns raised by the European Commissioner for Human Rights (2005) over disproportionate sentences, increases in the use, and length of, custodial sentences and insufficient respect for the rule of law.⁵

In an exchange between the UN Committee and the Labour government in the late 1990s, it could be seen how the UNCRC, and other Conventions, could be flouted. This dispute involved the UN Committee being critical of government in England and Wales for intensifying modes of intervention into the lives of children and young people aimed at preventing crime under the *Crime and Disorder Act* 1998. In response the government had claimed that early intervention is an entitlement and that such pre-emptive policies contribute to "the right of children to develop responsibility for themselves".⁶ Thus, as Muncie and Goldson (2006, p. 38) point out, the government in England and Wales was to appropriate a discourse of rights, which was to justify degrees of authoritarianism that were far removed from UN intentions.

² Criminal Procedure Rules [UK SI 2005 No 384]. These procedural rules are examined further below when considering more generally principles within the criminal justice system.

³ Put and Walgrave, 2006;McAra, 2010, p. 291.

⁴ UN Committee on the rights of the Child 2008.

⁵ European Commissioner for Human Rights 2005.

⁶ UK Government 1999.

European Union (EU) law

The EU is increasingly active in the area of police and judicial co-operation, which includes joint investigations, evidence sharing and the extradition of accused and convicted individuals. More recently, the need for greater harmonisation of the procedural safeguards provided to suspects, including those who are the subject of these EU measures, has been recognised. Directives are now in place guaranteeing the right to interpretation and translation,⁷ the right to information⁸ and the right to legal assistance.⁹ In November 2013, the Commission adopted additional procedural safeguards, including a draft Directive on special safeguards for children. This would include some provisions already in place in England and Wales – such as the presence of a parent or appropriate adult – but also some new safeguards, such as a provision on mandatory legal assistance.

The 2009 Lisbon Treaty confirms that ECHR rights constitute general principles of EU law, and EU criminal law measures and their implication at the domestic level must be interpreted in accordance with fundamental rights. However, EU measures in criminal law and justice have less of an impact in England and Wales because the UK government managed to negotiate an opt-out to the Lisbon Treaty under Protocol 21, which extends to legislation amending existing measures which are binding upon the United Kingdom; instead participation is to be decided on a case-by-case basis.¹⁰ The UK must decide to 'opt in' to measures such as the recent procedural safeguards, for them to have any legislative effect in England and Wales.

Civil law

The civil law is relevant in relation to youth justice when dealing with anti-social behaviour. In particular, the Crime and Disorder Act 1998 introduced a number of orders addressing criminal behaviour through the civil law. This includes anti-social behaviour orders (ASBOs), a civil order which can be applied for in respect of anyone aged 10 years and older (including adults) when their behaviour is thought likely to cause alarm, distress or harassment.¹¹ The orders last for a minimum of two years, with a breach being dealt with as a criminal action, which carries a maximum sentence of 6 months if dealt with in the youth court and five years in the Crown Court. There have been serious concerns raised over the impact of ASBOs on children and young people, particularly over the minimum order being in force for so long; the evidential basis on which the orders are issued; the number of prohibitions imposed being excessive; the number of orders breached; and the proportion receiving a custodial sentence.¹²

There was also introduced under the civil law the child safety order, which can be imposed by a family proceedings court on a child below the age of criminal responsibility (10 years) who is considered to be 'at risk' of offending. Intended as a protective measure, the order places the child under the supervision of a social worker or a member of the youth offending team for a period up to 12 months. A breach of requirements can lead to a care

⁷ Directive 2010/64/EU.

⁸ Directive 2012/13/EU.

⁹ Directive 2013/48 EU.

¹⁰ See further Omerod 2011, p. 18-21.

¹¹ The Anti-Social Behaviour Act 2003 was to further extend the powers available under an ASBO.

¹² European Commissioner for Human Rights 2005: paras. 108-120; Morgan and Newburn 2012, p. 513. ASBOs are considered further below.

order being imposed, which is reminiscent of welfare interventions required for juveniles before being abolished under the 1989 Children Act.

The 1998 Crime and Disorder Act also introduced parenting orders under the civil law. These orders can require guidance or counselling sessions once a week for up to 12 weeks, and can be imposed on parents whose children are on a child safety order, and anti-social behaviour order or a sex offender order. The maximum penalty for breach of a parenting order is £1,000.

Brief history of and current trends in juvenile justice policy

An historical approach is helpful in seeking to understand the contemporary system of youth justice in England and Wales. This is not only a history of young people and crime but also one of social control. In addition to changes in the criminal law, police and prosecution system, therefore, it is also important to consider developments in welfare. It was due to an increased awareness of the different needs of juveniles and adults that the Children and Young Persons Act (hereafter: C&YP) 1908 first set up juvenile courts. These courts were to deal with both offenders and neglected and destitute children, thus combining 'justice' and 'welfare' responses. From the outset, therefore, conflict and ambivalence were embedded in the concept of the juvenile court.

By the early twentieth century the development of criminological science, known as positivism, was to become influential. Conceptions of the offender were to change as they came to be perceived as diseased or dysfunctional in nature, requiring individualised treatment responses from psychiatrists, psychologists and social workers, designed to meet the offender's needs.¹³ 'Justice' on the other hand, was represented by agencies of the police and magistrates who tended to hold classical conceptions of the offender operating under their own free will and independent of moral agents. Thus punishment rather than treatment was considered to be the best way to deal with juvenile offenders.

The 1933 C&YP Act formally required the court to have regard to "the welfare of the child" when dealing with child offenders. The juvenile court was to act in *loco parentis*, which meant adjudicating on matters of family socialisation and parental behaviour, even if no crime had been committed. While the 1933 Act meant that the role of the 'welfare' agencies was dominant, the 'justice' agencies were prepared to work cooperatively alongside. This led to the expansion of the juvenile justice system as it came to deal with both deprived and depraved children, concentrating on either their needs or deeds.

Tensions between notions of 'welfare' and 'justice' were to come to the fore in the 1969 C&YP Act. The intention of the Act was to adopt a 'welfare' approach which was to include diverting children from the juvenile courts (by increasing the age of criminal responsibility from 10 to 13 years)¹⁴ and by imposing restrictions on the prosecution of those aged 14- to 17-years. The 1969 Act was not implemented in full, principally due to the two main political parties holding very different conceptions of young people and crime. According to Bottoms (1974), this led to a dual system of justice, bringing together two ideologically opposed models of 'welfare' and 'justice,' which was to lie at the heart of the problem of our contemporary youth justice system.

By the early 1970s the welfare approach came to be criticised for extending the net of social control by drawing non-offenders into the juvenile justice system. There was also

¹³ O'Brien 1995.

¹⁴ The age of criminal responsibility had been raised from 8 to 10 years in the 1963 C&YP Act.

evidence emerging that rehabilitative efforts were having no appreciable effect on reducing offending.¹⁵ In the 1980s, in England and Wales, across Europe and in the United States there was an explicit revival of traditional crime control values – which led to a more punitive juvenile justice system. The Conservative Government's Criminal Justice Act 1982 was to hit at the root of the social welfare perspective underlying the 1969 Act. Instead of 'welfare' the rhetoric was targeted at young 'thugs' who were said to be in need of a 'short, sharp shock' and so the number of secure places for juveniles was to be increased. However, alongside the requirement for harsher and more punitive penalties there were adopted diversionary strategies, particularly police cautioning for less serious offences. Thus, once again, a process of bifurcation, or a 'twin-track approach' was occurring.¹⁶

The 1989 Children Act was to represent a major structural alteration to the law concerning the welfare of juveniles. The most important change was the cessation of the use of the care order as a disposal available to the court in criminal proceedings, and the removal of the offence condition in proceedings that justified state intervention into the life of a family. Instead of the juvenile courts dealing with children in 'need', new rules provided for the transfer of care proceedings to the renamed family proceedings court. There were also changes with the 1989 Act requiring 17-year-olds to also be dealt with in the newly named 'youth court'.

The 1990s were seen to take a punitive turn following the well-publicised urban disturbances of 1991 and the moral panic over persistent young offenders, particularly following the abduction and murder of two-year-old James Bulger in 1993 by two 10-year-old boys. With sensationalised media reports, both nationally and internationally, this event was to trigger a moral panic that led to widespread moral outrage and concerns that the youth justice system was failing to protect the public.¹⁷ Custody was once more promoted as the key means to prevent offending through Conservative slogans of 'prison works'. In relation to persistent young offenders there was introduced in 1993 a new custodial sentence known as the 'secure training order'. After having been in opposition for 18 years, the newly elected Labour Government in 1997 made reform of the youth justice system a priority.

The Crime and Disorder Act 1998 which followed was described as a "comprehensive and wide-ranging reform programme".¹⁸ The legislation appears to favour punishment to signal society's disapproval of criminal acts and deter offending. At the same time, it was to remain faithful to its commitment to be "tough on crime, tough on the causes of crime" by referring at times to social factors which contribute to crime, and by proposing to prevent re-offending through an interventionist, welfare approach reminiscent of interventions in the 1960s and 1970s. The Act also contains provisions that underline support for the government's belief in restorative justice principles.

The 1998 Act set out a managerial framework for youth justice, which included the setting up of the national Youth Justice Board and multi-agency youth offending teams (hereafter: YOTs) based in each local authority area.¹⁹ There was a wide range of

¹⁵ Martinson 1974.

¹⁶ Bottoms 1977.

¹⁷ Concerns were raised that the police were using 'multiple cautions' instead of sending persistent offenders to court (though this practice was never as widespread as believed – see Evans and Wilkinson 1990).

¹⁸ Home Office 1997, p. 1.

¹⁹ The composition of YOTs is discussed below.

interventions introduced by the 1998 Act, both out-of-court and in court, which required a 'stepwise' or 'progressive' approach to reoffending. Not surprisingly, the Crime and Disorder Act 1998 was to have the desired effect of increasing the number of children and young people drawn into the formal youth justice system. However, subsequently there were changes made which were intended to introduce more flexibility when dealing with young offenders both in and out of court.

In 2008 an Independent Commission on Youth Crime and Anti-Social Behaviour was set up with a remit to establish a blueprint for an effective, humane and sustainable approach to youth crime and anti-social behaviour based on clear principles and sound evidence. The blueprint for reform is contained in *A New Response to Youth Crime*²⁰, which sets out nine main recommendations for reform. These include reducing the number of cases brought to court as well as the number of young people taken into custody, increasing the use of restorative conferences and requiring resources to be targeted more towards prevention.

The general election in 2010 resulted in a hung parliament with no one political party gaining an overall majority in the House of Commons. For the first time since the Second World War a Coalition Government was formed, here between the Conservatives and the Liberal Democrats. In this current time of austerity, the priority for the Coalition Government is to tackle the deficit. This has led to budget cuts being imposed on all criminal justice agencies. In addition, in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, there are measures designed to introduce a more flexible approach to juvenile offenders. These include, for example, increased opportunities for diverting juveniles from court and also adopting a more flexible approach to court sentences, designed to reduce the number of juveniles sent to custody. However, the 2012 Act also adopts a punitive measure through the introduction of a new offence of 'knife crime', which is an offence of 'threatening with an article with blade or point or offensive weapon in public or on school premises'. This new offence is intended to have a deterrent effect with a mandatory minimum sentence of four months being required for 16- and 17-year-olds.²¹ Thus, once again, there can be seen to be a process of bifurcation with a shift towards diversionary policies but, at the same time, with the adoption of harsher and more punitive penalties.

General principles of national juvenile law and juvenile criminal justice

In England and Wales, there is no written penal code, criminal procedure code or definitive statement of the principles of criminal justice. Instead, as Ormerod (2011, p. 4) explains, the criminal law has developed over many centuries, and the purposes of those who have framed it, and those who have enforced it, have undoubtedly been many and varied. Criminal justice is about society's formal response to crime. In the absence of a penal code, there are some important principles that guide criminal justice procedure as well as the rule of law.

There had been a distinction under the common law when dealing with children between the ages of 10 and 14 years as they were presumed not to possess the necessary knowledge to have a criminal intention. This common law presumption of *doli incapax* was rebuttable by the prosecution after calling evidence to show that the child knew what he or she was doing was seriously wrong in the criminal sense. However, this defence came to be seen as anachronistic and it was abolished under the Crime and Disorder Act 1998.²²

²⁰ Smith 2010.

²¹ There is a maximum custodial sentence of four years for this offence.

²² See Fionda (2001).

The most important statute governing the investigation of crime and the rights of suspects held in custody is the Police and Criminal Evidence Act (hereafter: PACE) 1984. The Act set out the grounds for police powers to stop and search people, to make arrests, as well as to provide access to legal advice for people arrested by the police on suspicion of having committed an offence. There are detailed Codes of Practice, with Code C setting out the requirements for the detention, treatment and questioning of suspects not related to terrorism in custody. The main concession in Code C in relation to juveniles (aged 10 to 16 years) is that the police must arrange for them to have an appropriate adult.²³ This mandatory safeguard is also required for detainees who have mental health problems and/or learning disabilities. For suspects (or their parents when acting as appropriate adults) who do not understand English, PACE requires that the police arrange for an interpreter during interrogations, and for the translation of essential documents in order that the suspect can exercise their right of defence.²⁴

The criminal justice system operates within an adversarial-rooted framework for both adults and juveniles. However, under Section 37(1) of the Crime and Disorder Act 1998 the principal aim of the youth justice system is to prevent offending and Section 37(2) requires “all persons and bodies carrying out functions in relation to the youth justice system to have regard to that aim”. It is difficult to see how defence practitioners are required to comply with this requirement when acting to protect the legal rights of young suspects and defendants.

When examining a brief history of the juvenile justice system above, it is evident that criminal justice principles can vary over time. A good example of how fluctuations in policy and practice can influence non-prosecution decisions, including the suspect's age, can be seen in changes to the Crown Prosecution Service (hereafter: CPS) Code of Practice. In the first Code, for example, the objective was to divert juveniles from court if at all possible and, it was stated, “Prosecution should always be regarded as a severe step”.²⁵ The revised Code further encouraged diversion of young suspects, stating that prosecution should only be used as a last resort.²⁶ A new Code in 1994 was to reflect the changing political mood towards young offenders. The requirement then was that, “Crown Prosecutors should not avoid prosecuting simply because of the defendant's age”, a statement which was reiterated in the next version of the Code.²⁷ However, in the latest Code, age is once again re-asserted as an important factor, which should influence a non-prosecution decision. Indeed, in promoting a different approach to juveniles it states:

“The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system, which is to prevent offending by children and young people. Prosecutors must

²³ A recent change to PACE means that 17-year-olds are also now required to have an appropriate adult. The role of the appropriate adult is considered further below.

²⁴ PACE Code of Practice C, para. 13.

²⁵ CPS 1986.

²⁶ CPS 1992.

²⁷ CPS 1994 and CPS 2010.

also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child".²⁸

It is evident therefore that diversionary policies and practices are shaped by changing political influences, rather than on principles based on differences of age.

Models of juvenile justice in England and Wales

The youth justice system in England and Wales is based on an adversarial criminal justice system within which suspects and defendants are considered to be innocent until proven guilty. The burden of proof is on the prosecution to prove beyond reasonable doubt that the defendant is guilty.

There are various typologies that can be used to classify the youth justice system in England and Wales. When examining a brief history of juvenile justice above, it was noted that throughout much of the twentieth century there were tensions between the competing paradigms of 'welfare' and 'justice'. With a concentration on managing the system from the 1980s, Winterdyk (2002) classified England and Wales as having a 'corporatist model'. Following the 1998 Crime and Disorder Act, and other legislation, new paradigms of 'restoration' and 'actuarialism' are also seen to be dominant in the youth justice system. For example, restoration can be seen in restorative justice where interventions seek to involve both the victim and offender in seeking to address the harm caused by the offence and/or their offending behaviour. The actuarial model focuses on the management of crime through a calculation of the 'risk' of reoffending when deciding on appropriate interventions. It is evident, therefore, that while relevant typologies can be identified, there is no single classification that would effectively bring together these competing paradigms.

There are difficulties in seeking to adopt a single classification because, as McCrae (2010) points out, a central tension which lies at the heart of the youth justice systems is the requirement to meet the needs of the troubled and vulnerable young offender at the same time as meeting the needs of society. While the aim of any reform, first and foremost, should be to reconcile such tensions, she notes that such reform is always to be constrained by the broader social, cultural and political environments within which the youth justice system operates. A major factor influencing reform of the system in England and Wales has been the political context within which policy decisions have been made. With a broad political consensus between the two main political parties following the Second World War, for example, this was to breakdown in the 1970s as the parties came to hold different conceptions of social order and the appropriate response to juvenile offenders. The Conservatives effectively promoted themselves as the Party of 'law and order' and after having spent 18 years in opposition, the Labour Party wanted to shake-off its image of being 'soft on crime'. In published reports the Labour Party in opposition set out its proposal to improve the effectiveness of the youth justice system by "preventing, deterring and punishing youth crime".²⁹

Because of the broader social, cultural and political environment within which a youth justice system is located, therefore, the capacity for reform is to be constrained. At present the Coalition Government are concerned with financial imperatives, which can be seen to be influencing changes in the youth justice system as well as the criminal justice process more

²⁸ CPS 2013a, para. 4.12(d).

²⁹ Home Office 1997, p. 2.

widely. Instead of the interventionist approach adopted following the reforms of the 1998 Crime and Disorder Act, there can be seen a shift towards what Cavadino and Dignan (2006, p. 201) describe as a 'minimal intervention' model. However, at the same time as diversionary policies are aimed at reducing the number of young offenders coming into court and custody, new measures have been introduced which require a tough line to be taken with serious and persistent offenders.³⁰

While such typologies are useful in identifying differences in youth justice systems, therefore, they can be insufficient in reflecting the vastly different trajectories of youth justice. As Muncie (2008, p. 117) points out, such classificatory models can fail to do justice either to the ways in which systems are always in a state of change themselves or to the various ways in which broad trends can be "challenged, reworked, adapted or resisted at the local level".

The treatment of juveniles in criminal proceedings

The youth justice system provides only few additional protections to children and young people drawn into the criminal process. Indeed, apart from the mandatory requirement for an appropriate adult, and a separate youth court, juveniles are treated the same as adults within the criminal process. When arrested and detained by the police, for example, the questions asked by a custody officer are the same for juveniles as they are for adults. This means that at the age of 10 a child is asked if they are dependent on alcohol and/or drugs, girls at that age are also to be asked if they could be pregnant. There is no mandatory requirement for children, or other vulnerable suspects, to have legal advice in the police station, even when being dealt with for very serious offences.³¹

There are some additional protections in relation to age with the taking of fingerprints, photographs and non-intimate samples, as the police have to have the consent of a parent/appropriate adult for those aged 10 to 14 years.³² For those aged 14 to 18 years, the consent of the suspect is also required. The police do have the power to take fingerprints, photographs and non-intimate samples, such as hair (other than pubic hair) or nail samples, without consent in cases where a suspect has been arrested for a recordable offence.³³ Intimate samples, such as blood, semen, urine and saliva can only be taken by a doctor or other registered health care professional on the authority of at least the rank of inspector. Such samples can only be taken with consent, which, in the case of juveniles, as noted above is the same as that required when dealing with non-intimate samples. If consent is refused the suspect must be warned that their refusal may harm their case if it comes to trial.³⁴

At court there have been attempts to make the youth court more informal, and for magistrates to engage more positively with young defendants. Indeed, as a consequence of the ruling of the European Court of Human Rights (hereafter: ECtHR) in the case of *T v.*

³⁰ The introduction of the new sentence of 'knife crime', for instance.

³¹ The remedy for a vulnerable person being interviewed without legal advice in relation to very serious cases would be for the lawyer to challenge the admissibility of the interrogation evidence at trial (S. 76 and 78 of PACE are the two main exclusionary evidential rules).

³² See PACE Code of Practice D for the rules relating to the taking of fingerprints, photographs and intimate and non-intimate samples.

³³ Recordable offences include all but the most trivial offences.

³⁴ See PACE Code of Practice D for the rules relating to the taking of fingerprints, photographs and intimate and non-intimate samples.

United Kingdom and *V v. United Kingdom*³⁵, a Practice Direction was issued.³⁶ The Direction encouraged judges to ensure that all those concerned in proceedings understood what is happening and that they sought to increase the level of engagement with young people and their parents. This included recommendations that the court should explain the proceedings to a young defendant, remind legal representatives of their continuing duty to explain each step of proceedings, and ensure, so far as practicable, that the trial is conducted in language which the defendant can understand. The Direction also requires steps to be taken to minimise the formality of young defendants' Crown Court trials (for example, require the barristers in court to remove their wigs and gowns) and to enhance their participation, which guidance was also extended to the youth court.³⁷ From earlier research findings it was evident that such steps were required. In a study which included 37 interviews with young people who had experience of the youth justice system, for example, proceedings in court were generally not understood, and instead "passed in something of a blur".³⁸

It seems from more recent findings that not a lot has changed. In Lacey's (2012) study, for example, which included interviews with 58 young defendants, while YOTs are required to provide information to juveniles, and their parents/carers, prior to coming into court, many respondents reported receiving little or no information or support. This left the juvenile, and their parent/carer feeling anxious and confused. In addition, Lacey found that the atmosphere of the courtroom, and what was described as the "unapproachable nature of the judges and magistrates" was to have an effect on the extent to which children felt able to talk in court. Having confirmed their name and entered their plea of 'guilty', most respondents said they felt it was inappropriate to speak further in court; instead this was seen to be the role of their solicitor. Deterring juveniles from speaking up in court, Lacey notes that, "There was also an assumption on the part of the young people that they did not know how to speak to the 'judge' and that they might act out of turn" (2012, p. 129). Similar issues were highlighted in a Criminal Justice Joint Inspection (2011a) of youth court work and reports, where YOTs were found not to engage sufficiently with young people and their parents/carers in court, or to help them understand what was happening.

While youth courts are required to be less formal courtrooms in seeking to meet the needs of juvenile defendants, this is not always the approach adopted by presiding magistrates. In the joint inspection, for example, it was found that some of those responsible for sentencing young defendants had mixed feelings about how informal a youth court should be. In particular, "They wanted the court to have appropriate authority and for the experience to be memorable for the young person".³⁹

³⁵ ECtHR 16 December 1999, *T v. United Kingdom*, no. 24724/94 and *V v. United Kingdom*, no. 24888/94.

³⁶ Practice Direction (Crown Court: Trial of Children and Young Persons) [2001] 1 Cr. App. R. 483.

³⁷ See Home Office and Lord Chancellor's Department 2001; Youth Justice Board 2002 and 2003.

³⁸ Hazel et al. 2002, p. 12.

³⁹ Criminal Justice Joint Inspection 2011a, p. 28.

2. Structure and main characteristics of the juvenile justice system in England and Wales

Minimum age of criminal liability

The minimum age of responsibility in England and Wales is 10 years, which means that persons under that age cannot be guilty of any offence.⁴⁰ They cannot be arrested and interrogated as a suspect under ten years of age, although they can be interviewed by the police as a potential witness in a case.⁴¹ As noted above, there had been a legal presumption of *doli incapax*, which assumed that children aged under 14 years did not know the difference between right and wrong and were therefore incapable of committing an offence. This was a rebuttable presumption if the prosecution could satisfy the court that the child knew what they were doing was seriously wrong. The presumption of *doli incapax* was abolished by section 34 of the Crime and Disorder Act 1998, which means that juveniles aged 10 years and above are now treated as adults in the criminal justice system.

The UN Committee on the Rights of the Child (2008) has consistently criticised England and Wales for its low age of criminal responsibility. Nevertheless, in the case of *T v. United Kingdom* and *V v. United Kingdom*⁴² the European Court of Human Rights ruled that the age of ten could not be said to be so young as to differ disproportionately to the age limit followed by other European States.

Definition of juvenile and relevant categories

The definition of a 'juvenile' varies in relation to a range of different activities. For example, a juvenile cannot buy a pet until they are 12 years or older, do a newspaper delivery round from 13 years onwards, and consent to sex until they are sixteen years. With the consent of their parents a 16 year old can get married but they are not allowed to drive a motor vehicle until they are 17 years. In relation to suspects arrested and detained by the police, as well as defendants taken to court, the legal definition of a 'juvenile' is now those aged between 10 and 17 years inclusive (Criminal Justice Act 1991).⁴³ Within the category of 'juveniles' there tends to be distinction drawn between children, aged between 10 and 13 years, and young people, aged between 14 and 17 years. Up until April 2013, PACE had defined juveniles as those aged 10 to 16 years – with 17 year olds being treated as adults. However, following a successful judicial review in the case of *Regina v. Cousins-Chang*⁴⁴ it was held that treating 17 year olds as adults was unlawful. Accordingly, juveniles are now defined as those aged 10 to 17 years, which means that 17-year-olds are required to have an appropriate adult when detained by the police.⁴⁵

⁴⁰ Section 50 of the C&YP Act 1933 set the minimum age of criminal responsibility at eight years. This was increased to the current age of ten by section 16 of the *C&YP Act 1963*.

⁴¹ See CPS 2011 and CPS 2013b.

⁴² [2000] 2 All ER 1024 (Note); (1999) ECtHR 16 December 1999, *T. v. United Kingdom*, no. 24724/94 and *V. v. United Kingdom*, no. 24888/94.

⁴³ In the context of safeguarding the welfare of children, this also includes 17 year olds (see Department for Children, Schools and Family 2010).

⁴⁴ *R. (Cousins-Chang) v (1) Secretary of State for the Home Department and (2) The Commissioner of Police of the Metropolis* [2013] EWHC 982 (Admin).

⁴⁵ This requirement has been recognised by the police, although Code C of PACE has yet to be amended to this effect (see Association of Chief Police Officers 2013).

When juveniles are dealt with in the youth justice system there are age restrictions concerning certain types of criminal sanctions. These differences are explored further below when considering court sentences and out-of-court penalties.

Relevant actors

The relevant actors within the criminal process include the youth offending team, the police, the Crown Prosecution Service, the judiciary, defence solicitors and appropriate adults.

Youth Offending Team (YOTs)

YOTs comprise social workers and probation officers, who have historically worked with young offenders, police officers, representatives from education and health and a YOT manager. The role of the YOT is wide-ranging as it includes both preventative work with children and young people 'at risk' of offending, as well as with their parents; those receiving an out-of-court disposal which requires an assessment and intervention; and also supervising offenders subject to court orders and those who are released from custody.

Police

The police are the competent authority to deal with investigations into alleged criminal offences and the gathering of evidence. For the most part, the procedures are the same for juveniles and adults. It is the police who are responsible for undertaking interrogations with juveniles and for making charging decisions – although the CPS are required to make decisions in relation to more serious and complex offences. There is no requirement for the police to be specialised when dealing with juvenile suspects, although there are specialists within child protection teams who deal with children as victims of crime.

Crown Prosecution Service (CPS)

As with adult offenders, when a decision to charge has been taken, the case is passed from the police to the CPS. A prosecutor will review the case file, liaise with the police concerning any additional evidence required, and prosecute the case in court. Within the CPS there is an appointed 'youth offender specialist' (YOS)⁴⁶ whose role is to review case files involving young defendants, to make all major decisions in relation to those files and to provide training locally to other prosecutors in dealing with young offenders. The YOS will also make regular appearances in the youth court, but not all youth court cases are dealt with by the YOS, and provide training to other prosecutors in dealing with young offenders.

Judiciary

The judiciary sitting in youth court cases will either be a district judge (who is an experienced criminal lawyer) or a lay magistrate. A judge deals with cases in the Crown Court. There is training provided for the judiciary which will involve issues relating to juvenile defendants and witnesses.⁴⁷ For lay magistrates a specialised training course has to be completed before they are allowed to preside over cases in the youth court. Both district judges and magistrates gain experience of working with juveniles by regularly sitting in the youth court. There are not a sufficient number of cases sent up to the Crown Court to enable judges to become specialised in juvenile cases.

⁴⁶ The YOS is required to have undertaken a youth offender training course.

⁴⁷ The Judicial College is responsible for training judges and for oversight of the training of magistrates.

Defence solicitors

Defence solicitors can represent the legal interests of children and young people at both the pre-charge investigative stage and also at court, in the same way that they deal with adults. Suspects have the right to free and independent legal advice when detained in police custody and also when interviewed by the police on a 'voluntary' basis.⁴⁸ Police station legal advice can be provided by criminal solicitors or accredited legal representatives.⁴⁹ The accreditation scheme for duty solicitors and non-solicitors includes training on the special treatment of juveniles and other vulnerable persons investigated by the police. The scheme has been found to help improve the quality of legal advice and assistance provided to those held in police custody.⁵⁰ However, recent research suggests that the quality of legal advice has declined, at least in some stations, particularly where legal advisers have been excluded from custody suites.⁵¹ In particular, in a recent in-depth study of one large police station where the defence had been excluded, a key finding was the passive and non-adversarial way in which the majority of legal advisers engaged in the pre-charge process.⁵² Such criticisms are reminiscent of issues raised in earlier research studies.⁵³

Of suspects arrested and detained in police custody in 2009, 45 per cent were found to request legal advice, and around 35 per cent received such advice.⁵⁴ There was the same request rate for juveniles aged 10 to 17 years as for adults at 45 per cent,⁵⁵ but there were variations depending on age. For instance, there was a similar request rate for those aged 16-17 years and also 14-15 years, at 46 and 45 per cent respectively, compared to just 39 per cent of those aged 10 to 13 years. With such a young and vulnerable age group it is of concern that they are the least likely of any age group to request legal advice. It seems that this is because at such a young age their parents, or other carer, tend to take on the role of the appropriate adult and they are not as aware of the importance of having legal advice as are the professional and voluntary services.⁵⁶

If prosecuted, both adult and juvenile defendants have to apply for a representation order to obtain the services of a publicly funded lawyer. Both have to pass the 'interests of justice' test before legal aid will be granted, with the same test being applied to adults and juveniles.⁵⁷ There is also a financial test that has to be applied, although those in full-time education – up to 16 years – are exempt. For 17-year-olds who are in employment the

⁴⁸ Section 58(1) of *PACE* and Code C, para. 3.21.

⁴⁹ There is an assessment and training programme for legal advisers through which they gain accreditation to provide legal advice. As a probationary trainee they can provide legal advice for up to twelve months before gaining accreditation.

⁵⁰ Bridges and Choongh 1998.

⁵¹ Kemp 2010, p. 5 and Kemp 2013a, p. 201.

⁵² Such passivity on the part of some legal advisers within an adversarial system of justice was seen to undermine clients' legal protections - see Kemp 2013b, p. 20.

⁵³ McConville et al. 1994.

⁵⁴ This was based on a sample of over 30,000 custody records drawn from 44 police stations in four police force areas (Pleasence et al., 2011). The previous large-scale study (McConville and Hodgson 1993; McConville et al. 1994) was based on custody records drawn from the mid-1990s and the request rate for legal advice at that time was 40 per cent and 34 per cent received advice according to Home Office figures (Bucke and Brown 1997).

⁵⁵ Bucke and Brown (1997) found that the request rate for juveniles at 41 per cent was slightly higher than that for adults at 39 per cent.

⁵⁶ Kemp et al. 2011, p. 38.

⁵⁷ The test can include the nature of the offence and the risk of custody.

financial test is the same as it is for adults. While defence solicitors are not required to have any special training when dealing with children and young people, some do tend to specialise by routinely dealing with cases in the youth court.

Appropriate adults

There is a mandatory requirement for vulnerable suspects, which includes juveniles and those with a learning disability or mental health problem, to have an appropriate adult during all stages of criminal proceedings, including in police custody. The necessity for this mandatory protection arose out of a miscarriage of justice, known as the 'Confait Affair'. This case involved the death of Maxwell Confait, where two juveniles and an 18 year old, who had the mental capacity of a 13 year old, were wrongly convicted of murder. This miscarriage of justice led to the setting up of the Royal Commission on Criminal Procedure (1981), which recognised that the welfare needs of vulnerable suspects meant that they were particularly susceptible to coercion and suggestion.⁵⁸ The protection of requiring an appropriate adult was subsequently incorporated into Code of Practice C (Code C) of PACE 1984. While parents or carers tend to act as the appropriate adult, the Crime and Disorder Act 1998 gave the YOTs the statutory responsibility for ensuring the provision of an appropriate adult service for juveniles (under 17 years) when parents or carers were not available.

The role of appropriate adults is to advise, support and assist vulnerable detainees in the police station, which now includes all children and young people aged under 18 years. When a juvenile is investigated by the police, the appropriate adult is required to look after their welfare, to explain police procedures and to provide them with information about their rights and to ensure that these are safeguarded, and to facilitate communication with the police.⁵⁹ Parents, a guardian or carer tend to take on this role in relation to children and young people but in cases where this is not possible they can be assigned a practitioner working in the YOT, social services or a volunteer sourced from the local appropriate adult volunteer network.⁶⁰ It is not the role of the appropriate adult to provide the juvenile with legal advice, but Code C, paragraph 6.5A requires them to consider whether legal advice from a solicitor is required. If the juvenile indicates that they do not want advice, the appropriate adult does have the right to ask for a solicitor to attend if they consider this to be in the best interests of the young suspect – although this does not mean that the suspect has to have legal advice if he or she is adamant that they do not want a solicitor.⁶¹ Research studies have found that YOT workers acting as appropriate adults do encourage the detainee to obtain legal advice, and many volunteer schemes have adopted a policy of requesting legal advice as a matter of course.⁶²

The effectiveness of appropriate adults has been questioned in earlier empirical research.⁶³ Some studies highlight that they often tend to be untrained and do not always appreciate the legal significance of police questions and procedures. Family members and friends are most likely to contribute to the interview (both appropriately and

⁵⁸ Sanders and Leng 1991.

⁵⁹ See the Guide for Appropriate Adults (Home Office 2013).

⁶⁰ Medford et al. 2003; Pierpoint 2008.

⁶¹ Code C, Note 6.5A.

⁶² Appropriate adults, particularly specialist independent appropriate adults, have been found to be influential in increasing request rates for legal advice (Brookman and Pierpoint 2003).

⁶³ For a review of earlier research see Hodgson 1997.

inappropriately) but more generally, the presence of an appropriate adult had an important effect: it was associated with less interrogative pressure and a more active legal adviser role.⁶⁴

Main phases of the juvenile criminal process

In 2010/11 there were a total of 1,360,451 arrests in England and Wales, of which 15.5 per cent (210,660) were juveniles.⁶⁵ Thus, while 10 – 17 year olds accounted for 15.5 per cent of all arrests they were 10.7 per cent of the population in England and Wales (Ministry of Justice 2013). Having made an arrest it is generally police practice to bring the suspect into police custody. Unfortunately there are no statistics that highlight the proportion of suspects who are arrested and detained by the police, although it is anticipated that this continues to be the majority of all juveniles who are interrogated by the police. This is despite Art. 37 of the UN Convention of the Rights of the Child, which states that arrest and detention “shall be used only as a measure of last resort”.

Following the making of an arrest there are various steps taken in the criminal process.

Arrest and detention

Just as with an adult suspect, having made an arrest the police are required to identify themselves, tell the suspect that they are being arrested, for what crime, and to explain why it is necessary to make an arrest. The police also have to caution the suspect, which is to advise them that they have the right to remain silent but, as noted below, adverse inferences at trial can be made if the suspect later seeks to rely on evidence which was not mentioned during the police interview. When brought to the police station it is the responsibility of a custody officer to determine whether or not there are sufficient grounds on which to authorise the suspect's detention. This requirement tends to be satisfied on the basis that further investigations are required, particularly the interrogation of the suspect.

Having authorised the detention of a suspect in relation to non-terrorism offences, in relation to both juveniles and adults, the police generally have 24 hours in which to detain suspects without charge, although an extension of a further 12 hours can be authorised by the police.⁶⁶ After 36 hours, the police have to apply to the magistrates' court for a warrant of further detention. The overall maximum period of detention that can be authorised in this way is 96 hours.⁶⁷

There is a PACE Code C requirement that a juvenile shall not be placed in a police cell unless no other secure accommodation is available and the custody officer considers it is not practicable to supervise them if they are not placed in a cell.⁶⁸ While the police might try to deal with juvenile suspects differently, such as placing them in a cell with a glass door within the custody suite, the lack of alternative accommodation in custody suites tends to mean that they are frequently held in police cells. With juveniles being required to have an appropriate adult present during the interrogation, this can sometimes have the perverse effect of extending their time in police custody.⁶⁹ For juvenile suspects arrested in the early

⁶⁴ Medford et al. 2003.

⁶⁵ This is the latest period for which data is available.

⁶⁶ PACE section 42(1). An extension has to be authorised by superintendent or a more senior police officer.

⁶⁷ PACE section 43(1).

⁶⁸ Code C, para. 8.8. The Code also states that juveniles will not be held in cells with adult suspects.

⁶⁹ See Kemp et al. 2012, p. 742.

evening or during the night, for example, they can be held in custody due to the lack of availability of an appropriate adult and the interrogation having to be delayed until the following day.⁷⁰ In 2008 and 2009 it was found that approximately 53,000 juveniles aged 10 to 16 years inclusive, were held overnight in police cells.⁷¹

Legal rights under PACE

When suspects are booked into police custody the custody officer first asks them a set of questions concerning their welfare, including an assessment of the risk of being detained. The next set of questions deals with a suspect's three legal rights. The first right informs them that they can have someone informed of their arrest, and for juvenile suspects the police must inform their parents (or carer) of their detention. The second right advises them that they have access to free and independent legal advice and the third right is that they can consult the PACE Codes of Practice. If the suspect, and/or their appropriate adult are unable to speak English then the police are required to obtain the services of an interpreter.

As, mentioned before, as the appropriate adult is not always available when suspects are first brought into custody their legal rights have to be repeated later on by the custody officer in the presence of the appropriate adult. It seems that police practice in some stations is to wait until the police are ready for the interrogation before contacting the appropriate adult and asking them to attend (Criminal Justice Joint Inspection 2011b, p. 31).⁷² This can be problematic, particularly if legal advice has been declined, as it is unlikely that the suspect would be persuaded to change their mind, and risk further delay while waiting for the solicitor to attend at the station. Securing their release from custody has been found to be an important priority for many suspects. Research has found that this leads them to decline legal assistance in some instances, as they believe, or are told by the police, that requesting a lawyer will delay things and result in a lengthier period of detention.⁷³

It seems that it is also the practice of legal advisers to wait until the police are ready to conduct the interrogation before attending at the station.⁷⁴ While such an approach is more convenient for legal advisers, it can be to the detriment of their clients. This is because solicitors tend to be accepting of the police timetable, including in cases with unduly long delays. It also means that solicitors tend to concentrate on the interrogation rather than the wider issues concerning their client's detention.⁷⁵ Accordingly, the following criticism made by the Criminal Justice Joint Inspection (2011b, p.5) of appropriate adults can also be said to apply to the defence, "The role of the appropriate adult had evolved over time to become increasingly focussed on process rather than safeguarding the interests of the child and promoting their welfare".

⁷⁰ Appropriate adult services are provided either directly by the YOT or by a voluntary (or private) sector agency on their behalf. This tends to be operated on a rota basis but not providing cover at night-time (Criminal Justice Joint Inspection 2011b, p.26; Skinns 2011).

⁷¹ Of those, four were children under the age of criminal responsibility, 1,674 were aged 10 and 11 years and 11,540 were children under the age of 14 years (Skinns 2011).

⁷² Kemp 2013a, p. 198. This would appear to be contrary to *PACE* which requires that legal advice should be available 'as soon as practicable' following an arrest (Code C, para. 3.15).

⁷³ See Blackstock et al. 2014; Kemp 2013a, p. 198.

⁷⁴ With solicitors receiving a fixed fee for providing legal advice it can be more efficient and cost effective for them to wait until the police interview before getting involved in cases (Kemp 2013, p. 196).

⁷⁵ Kemp 2013a.

Charging and bail decisions

Having conducted their investigations, the police (or the CPS in relation to serious and complex cases) then have to decide whether to take 'no further action', impose an out-of-court penalty or to take the case to court, either by charging the juvenile or issuing a summons. If the police decide to conduct further investigations the suspect can be bailed to return back to the police station at a later date.⁷⁶ It is also a matter for the police (or the CPS) to decide whether a suspect who has been charged should be bailed to court or held in police custody until the next available court date.⁷⁷ Statistics indicate that there are around 5,000 juveniles per year for whom police bail was refused.⁷⁸

For juveniles under 17 years, if bail is denied by the police, section 38 of PACE requires that they should generally be transferred to local authority accommodation.⁷⁹ However, there are exceptions allowed where the custody officer considers it impracticable to arrange for a transfer. In addition, in the case of juveniles aged 12 to 16 years, they can be held in police custody if there is no secure accommodation available and/or other local authority accommodation would not be adequate to protect the public from serious harm. When a joint inspection team examined this issue (Criminal Justice Joint Inspection 2011b), there were criticisms of the police for not routinely collecting this information. Instead, a sample of 49 cases was examined where juveniles had been held in custody after charge. It was found that in nearly two-thirds of cases (33), local authority accommodation was not sought.⁸⁰ In the following comment there were criticisms made of both the police and appropriate adults for allowing juveniles to remain in police custody until their court appearance:

"Whatever the intentions behind the legislation, we found that the procedure didn't really consider the needs of the children and young people ... Overall, the lack of clarity about both the role of the appropriate adult and the arrangements whereby a child or young person could be transferred to local authority accommodation meant that children and young people were spending longer in an unsuitable and potentially detrimental environment than was needed. The system put in place to protect their interests was not working." (Criminal Justice Joint Inspection 2011b, p. 5).

Court proceedings

When dealt with at court a juvenile must have a parent or appropriate adult accompany them. An important difference in the youth court is that proceedings are conducted in private whereas members of the public can be present in the adult courts.⁸¹ The youth court, and the adult magistrates' court, is presided over either by a district judge or three

⁷⁶ Certain conditions can be attached to bail, such as a condition of residence or a curfew. There can also be a condition not to associate either with the victim, witnesses and/or co-accused.

⁷⁷ This would normally involve an overnight stay in police custody although, if charged late on a Saturday a suspect would tend to be held until Monday morning.

⁷⁸ That was approximately 5,000 per year during 2008/09 and 2009/10: Skinnis 2011.

⁷⁹ Under section 21(2)(b) of the Children Act 1989 every local authority must provide accommodation for children whom they are requested to receive under section 38 of PACE.

⁸⁰ In 67 per cent of those 49 cases the Inspectors assessed that local authority non-secure accommodation would have been suitable: Criminal Justice Joint Inspection 2011b, p. 40.

⁸¹ The media can be present in the youth court but there are reporting restrictions concerning the identity of the juveniles concerned.

lay magistrates. There is also a legally trained court clerk who can assist the district judge/magistrates with the proceedings.

In most youth courts, juvenile defendants will be allowed to sit outside of the dock, usually with a parent or their appropriate adult. If produced from custody, they will be in the secure dock. The youth court operates in very similar ways to the adult court, although in an attempt to be less formal, advocates tend to remain sitting when addressing the court (instead of standing as required in the adult court), and address young defendants by their first name, rather than their surname. Magistrates are also encouraged to engage with the young defendant when imposing a sentence, by asking them if they want to add anything to what has already been said.⁸² However, as noted above, it seems that little has changed as the formality of the youth courts still deters juveniles from speaking when being dealt with in the youth court. YOTs were also criticised for failing to engage with juveniles at court.

At court the charge (or indictment in the Crown Court) is put to the juvenile who either pleads guilty or not guilty. In the event of a 'guilty' plea, which occurs in the majority of cases, the magistrates can proceed to sentence, although there may be an adjournment if a pre-sentence report is required (which is prepared by the YOT). A trial is dealt with in the youth court in the same manner as other proceedings, that is, either with a district judge sitting alone or with a bench of three lay magistrates. The role of the district judge/magistrates is to decide on the basis of the evidence presented if, beyond reasonable doubt, the defendant was guilty or not guilty.

While most cases involving juveniles will be heard in the youth court, they can be dealt with in the adult court (either magistrates' court or Crown Court) if jointly charged with an adult.⁸³ In cases involving more serious offences being dealt with by the Crown Court which jointly involve an adult and a juvenile, the court must only send the juvenile to the Crown Court for trial with an adult where it is necessary in the interests of justice to do so.⁸⁴ Factors to be taken into account include the ages of the adult and young person, their respective roles in the commission of the offence, the likely plea, whether there are existing charges in the youth court, the need to deal expeditiously with the case in the youth court, and the likely sentence upon conviction. Other matters with which the juvenile is charged, and which meet the requisite conditions, may also be sent up to the Crown Court (under section 51(5) and (6) of the Crime and Disorder Act 1998). Once a juvenile is validly committed to the Crown Court with an adult they must be tried in the Crown Court, even if the adult pleads guilty. However, the juvenile can be remitted back to the youth court if there is no longer an indictable offence against the adult and the juvenile has not been arraigned (i.e. asked to enter a plea), unless the remaining offence is a grave crime which requires a Crown Court trial.⁸⁵

In the Crown Court there is a judge who deals with cases on his/her own if the defendant enters a plea of guilty, but in cases involving a contested trial there is a jury of

⁸² Youth Justice Board 2002 and 2003.

⁸³ Juveniles jointly charged with adults can be dealt with summarily in the magistrates' adult court under section 51 Crime and Disorder Act 1998.

⁸⁴ If the juvenile is convicted in the adult court or pleads guilty, the adult court will usually send the juvenile's case back to the youth court for sentence. If the adult pleads guilty or his case is discharged and the juvenile pleads not guilty then their case may be sent back to the youth court for trial.

⁸⁵ There are very serious offences involving juveniles which can be sent up to the Crown Court for sentence, which are examined next in B.5.

twelve members of the public who are required to determine issues of fact. The only concession when dealing with children in the Crown Court tends to be the removal of wigs by advocates and the judge. In the case of the two boys mentioned above, who were aged 11 when on trial for the murder of James Bulger, an additional step taken was the raising of the dock so that they could view the proceedings.⁸⁶ However, the European Court of Human Rights held that these steps were insufficient and that the trial was in violation of art. 6, which guarantees the right of an accused to participate effectively in his criminal trial. In particular, with the trial taking place in open court, in front of an interested media and hostile public gallery, this was found to have the effect of intimidating and inhibiting the defendants, which was held to be incompatible with allowing them to participate effectively in their trial.

When being dealt with at court for serious offences young defendants can be remanded into secure accommodation, although concerns were raised over too many juveniles being remanded, particularly when a significant proportion went on to receive a non-custodial sentence.⁸⁷ Indeed, in 2010 the Prison Reform Trust noted that three-quarters of juveniles remanded by the magistrates' court, and one-third by the Crown Court, were subsequently acquitted or given a community sentence.⁸⁸

The issue of juvenile remands has been addressed by sections 91-107 of the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) 2012. The Act aims to reduce the use of secure remand for children and young people, and to simplify the complex remand arrangements into a 'single remand framework'.⁸⁹ Before remanding a young person in custody the court now has to make sure that one of two conditions are met: the seriousness of the offence must be either a violent or sexual offence, or one that, if committed by an adult, is punishable with a sentence of imprisonment of 14 years or more, or secondly, that there is a 'realistic prospect' of the young defendant receiving a custodial sentence – due to the young person having a history of committing offences or absconding while on remand. The 2012 Act also provides that 17 year olds can be remanded in secure children's homes or secure training centres, and not just young offender institutions. A court can impose conditions on a child remanded to local authority accommodation that are similar to those which can be imposed on a juvenile remanded on bail, such as electronic monitoring.

Court sanctions for juveniles

There have been changes to court sanctions available for juveniles over recent years. The 1998 Crime and Disorder Act, for example, introduced a number of new orders with the intention of encouraging the court to adopt a more interventionist approach when dealing with young offenders. These included curfew orders, rehabilitation orders and action plan orders. The courts could also impose community sentences, such as community rehabilitation orders and community punishment orders (previously probation orders and community service orders respectively). The Youth Justice and Criminal Evidence Act 1999 introduced the 'referral order' to be used with most first time offenders. Subsequently, in

⁸⁶ *T v. United Kingdom and V v. United Kingdom* [2000] 2 All ER 1024 (Note); (1999) 30 EHRR 131; 7 BHRC 659, ECtHR.

⁸⁷ There are approximately a quarter of juveniles in custody on remand: 620 in 2005/06 and 477 in 2011/12: Ministry of Justice 2013.

⁸⁸ Prison Reform Trust 2011.

⁸⁹ This includes transferring the costs of keeping a young person on remand to local authorities, as an incentive to use remand more sparingly. These provisions came into force in April 2013.

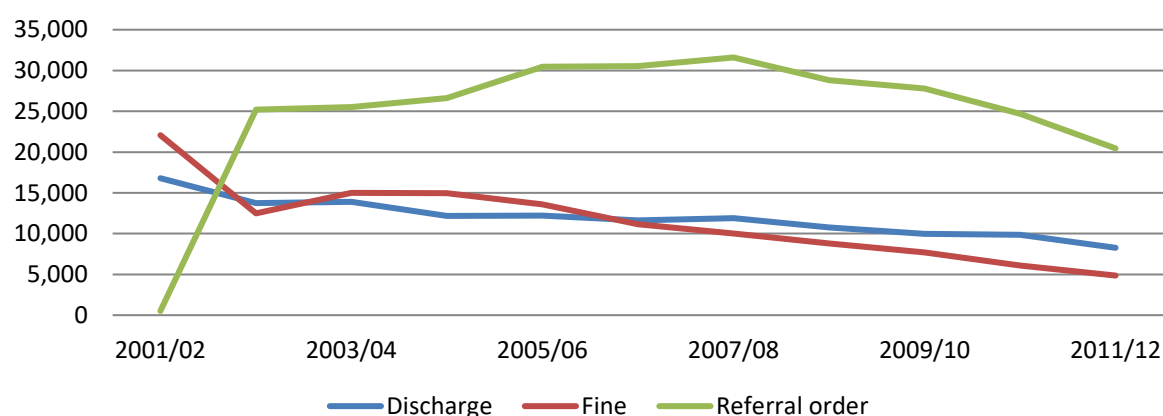
an attempt to rationalise the various court orders the Criminal Justice and Immigration Act 2008 introduced the 'youth rehabilitation order'.

The number of sentences imposed by the courts on juveniles has declined significantly over recent years: 94,870 in 2001/02 and 59,335 in 2011/12 – a reduction of 37 per cent. In part, such a decrease is due to a number of systems being put in place to try and divert young people from entering into the youth justice system and also from court. In relation to adults there has been little change in the number of court sentences imposed over the same period of time.⁹⁰

In relation to juvenile offenders, as noted above, the 1998 Crime and Disorder Act required the courts to adopt a more interventionist approach and this led to new community sentences being made available to the courts. The 'referral order' was used with the majority of those being dealt with at court for the first-time.⁹¹ Under this order the juvenile is required to attend a youth offender panel (made up of two members of the local community and an advisor from a YOT) and agree activities to be carried out under a contract. These can include making reparation to the victim or the wider community, as well as a programme of activity designed to prevent further offending.⁹² This new court order was seen to have the potential to be "the jewel in the crown in New Labour's youth justice reform panoply", but it seldom led to the active participation of victims (Morgan and Newburn 2012, p. 519).

With the courts required to impose a referral order when dealing with the majority of juvenile first-time entrants into court, the intention was to displace the courts use of discharges and fines.⁹³ As shown in Table 1, the referral order was to have the desired effect.

*Table 1: Discharges, fines and referral orders imposed on juveniles in court from 2001 to 2012.*⁹⁴



⁹⁰ There was a slight reduction with 1,240,126 adult offenders sentenced in 2001/02 compared to 1,213,630 in 2011/12: Ministry of Justice 2013.

⁹¹ A referral order was to be imposed unless the offence was so minor as to warrant a discharge or so serious that custody was considered to be appropriate.

⁹² The activities can last for between three months and a year.

⁹³ There is both an 'absolute' and a 'conditional' discharge available to the court. It is the parent who is responsible for payment of a fine imposed on a child aged under 16 years.

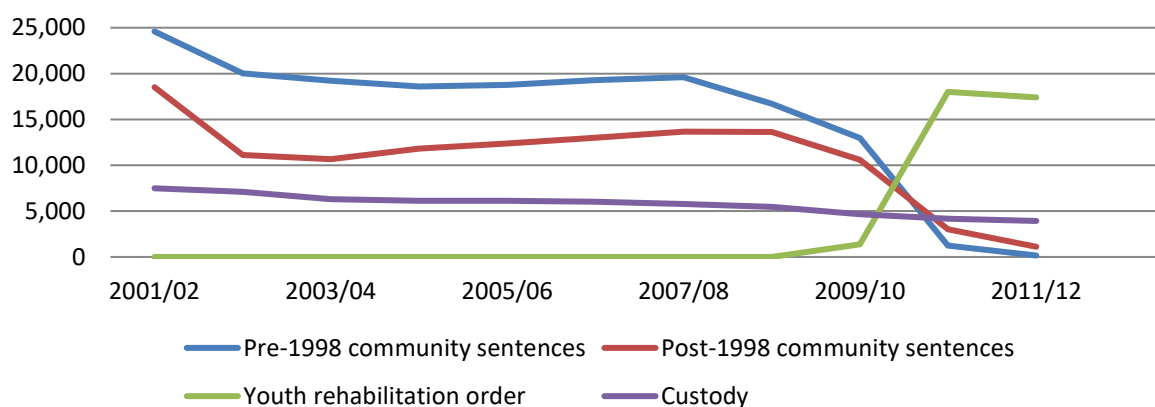
⁹⁴ All criminal statistics are drawn from Ministry of Justice (2013).

The steady reduction in the number of referral orders imposed from 2007 reflects the decline more generally in the number of cases coming into court. However, following implementation of the LAPSO Act 2012 it is to be expected that the courts use of these three court sanctions will increase. In particular, the Act now encourages magistrates to discharge or fine juveniles in cases where it is proportionate to do so. They also have flexibility in appropriate cases to repeatedly use a referral order.

So far as community sentences are concerned, as noted above there were a number of orders available to the courts prior to the 1998 Act which also included a combined community rehabilitation and punishment order together with supervision orders and attendance centre orders. The Crime and Disorder Act introduced a number of new sentences. In addition to those mentioned above, it introduced the drug treatment and testing orders and the sex offender orders. Subsequently, the new 'youth rehabilitation order' has replaced these different orders by providing a generic sentence in which there is available to the court a menu of 18 requirements that can be attached to this order to provide different types of intervention as required.⁹⁵ A member of the YOT is required to supervise the young offender placed on a youth rehabilitation order, which can be imposed for any time between six months and three years. If the order is breached the young offender can be re-sentenced for the original offence. There can also be imposed a maximum fine of £2,500.

Set out in Table 2 are the number of community sentences imposed between 2001 and 2012.⁹⁶ Also shown are the number of youth rehabilitation orders and custodial sentences imposed on juveniles.

Table 2: The number of community sentences, youth rehabilitation orders and sentences of custody imposed on juveniles from 2001 to 2012.



Introduction of the referral order in 2002 is likely to have been the cause of the sharp reduction in the number of community sentences from 2001/02. Similarly, the decline in pre- and post-1998 community sentences from 2008 is evidently due to the new youth rehabilitation order.

⁹⁵ These include, for example, a curfew, supervision, unpaid work, electronic monitoring, drug treatment, mental health treatment, education requirements and restorative justice.

⁹⁶ The community sentences are shown as those which had been available prior to the 1998 Act and the new orders introduced by the Act.

The number of custodial sentences is also included in Table 2, which shows a gradual decline in the use of custody since 2001/02. The Crime and Disorder Act 1998 introduced the new 'detention and training order' (DTO), which is the main custodial sentence available for 12- to 17-year-olds.⁹⁷ The DTO can be imposed for between four and twenty-four months – with half of the order being served in custody and the other half in the community. The number of DTOs imposed by the courts over the past decade has declined by around a half - from 6,915 in 2001/02 to 3,482 in 2011/12. While there has been a gradual reduction in the courts' use of custody, it is anticipated that the new offence of 'knife' crime, commented on above, is likely to have an effect on increasing the number of juveniles receiving a DTO. This is due to the deterrent effect of the mandatory minimum sentence of four months required for 16- and 17-year-olds.⁹⁸

There are other custodial sentences shown in Table 2. Under sections 90-92 of the Powers of Criminal Courts (Sentencing) Act 2000, for example, juveniles can be sentenced to custody for very serious offences, such as homicide, and also 'grave' offences, which include firearms and various sexual offences, robbery, residential burglary and handling stolen goods.⁹⁹ In 2001/02 there were 570 juveniles who were sentenced under these provisions and 381 in 2011/12 – a reduction on the previous year of 33 per cent. There are also 'extended' and 'indeterminate' sentences which can be given for the protection of the public under sections 226(3) and 228 of the Criminal Justice Act 2003. In 2005/06 there were 135 such sentences compared to 62 in 2011/12.¹⁰⁰

The provisions under the 2003 Act have now been abolished by the LAPS Act 2012 and instead there has been introduced a new 'extended sentence', to be used when there is found to be a significant risk to members of the public of serious harm occasioned by an offender of specified offences.¹⁰¹ The new 'extended sentence' requires that the court impose a custodial term of at least 4 years. A juvenile would serve two-thirds of the custodial term before being released on an extended licence of up to 5 years for violent offences, 8 years for sexual offences.

As noted above, the civil law is sometimes used to adopt risk-based initiatives, which were intended to make juveniles responsible for their offending behaviour. In relation to 'anti-social behaviour orders' (ASBOs), for example, a breach of the order can be dealt with in the youth court as a criminal offence. From 2000 to 2011 there have been a total of 21,749 ASBOs imposed by the courts, 8,160 of which were on juveniles (38 per cent). There can be seen to be variations in the use of ASBOs for juveniles, rising from 62 orders imposed in 2000, when first introduced, rising to a peak in 2005 of 1,581, and then a decline to 375 in 2011.¹⁰² Also, as commented on above, concerns were raised over the potential criminalising effect of ASBOs. This was also the view of the Home Affairs Committee (2013, para. 36) when it commented on the breach rate of ASBOs by juveniles being high at 68 per

⁹⁷ The 1998 Act had provided for this order to be imposed on 10- and 11-year-olds, but it has only been implemented with juveniles aged 12 years and older. The DTO replaced the secure training order for juveniles.

⁹⁸ All sentences and the new offence of 'knife crime' offence were implemented in December 2012.

⁹⁹ This means juveniles can be detained for a longer period than the normal maximum of 24 months, which is available under the DTO, if being dealt with for very serious offences.

¹⁰⁰ These sentences are available in relation to certain violent and sexual offences where the offender is defined as 'dangerous'.

¹⁰¹ See sections 123-5 of LAPS.

¹⁰² Ministry of Justice 2013.

cent,¹⁰³ with custody being used as a sanction in 38 per cent of cases. Thus, as the Committee notes, the use of ASBOs does not seem to have been effective in changing behaviour in most cases.

There are proposed reforms to ASBOs currently before Parliament under the Anti-Social Behaviour, Crime and Policing Bill. This includes expanding the definition of anti-social behaviour from that which causes 'alarm, distress or harassment' to 'conduct capable of causing nuisance or annoyance'. Instead of seeking to curtail the courts use of ASBOs, therefore, the new broader definition is likely to have the effect of widening the type of behaviour which can be brought under an order.¹⁰⁴

Alternatives to criminal proceedings/diversion mechanisms

There were a total of 46,328 juveniles receiving a criminal sanction by way of an out-of-court disposal in 2011/12. The 1998 Crime and Disorder Act had introduced a new final warning scheme for juveniles as an alternative to a police caution, which continues for adult offenders.¹⁰⁵ The final warning scheme effectively gave juveniles two opportunities for an out-of-court disposal prior to charge by way of a reprimand or warning.¹⁰⁶ If convicted at any time, the suspect was not eligible for either reprimand or warning and instead the police decision was either to take no action or to charge. A final warning would initiate a referral to the YOT for an assessment of what intervention may be required to reduce the likelihood of reoffending.

The rigidity of this 'stepwise' approach to out-of-court disposals had been criticised for criminalising some juveniles inappropriately and also for bringing minor and trivial offences into court unnecessarily.¹⁰⁷ Some flexibility was introduced in 2005, when the police were allowed to impose 'penalty notices for disorder' (PNDs) when dealing with 16- and 17-year-olds. Shown in Table 3 below are the numbers of juveniles receiving a reprimand and warning from 2001 to 2012, and also the number of PNDs from 2005. The number of out-of-court disposals was seen to reach its peak in 2006/07. Indeed, in that year a total of 152,269 offenders received an out-of-court disposal. Together with the 94,583 juveniles who received a court sentence in 2006/07, this means that 62 per cent of those receiving a criminal sanction had been diverted from court. This compares to 44 per cent in 2011/12 when 59,335 juvenile offenders received a court order and 46,328 an out-of-court penalty.

When considering these changes in the police use of out-of-court disposals it is important to examine other influences in the criminal justice system. In particular, in 2002 a police performance target was introduced which had the effect of significantly increasing the police use of out-of-court disposals, particularly in relation to minor offences committed

¹⁰³ Compared to 52 per cent for adults.

¹⁰⁴ This is a concern of many children's specialists and practitioners who have argued that the new definition could lead to ASBOs being imposed on children for simply playing outdoors (Play England 2013).

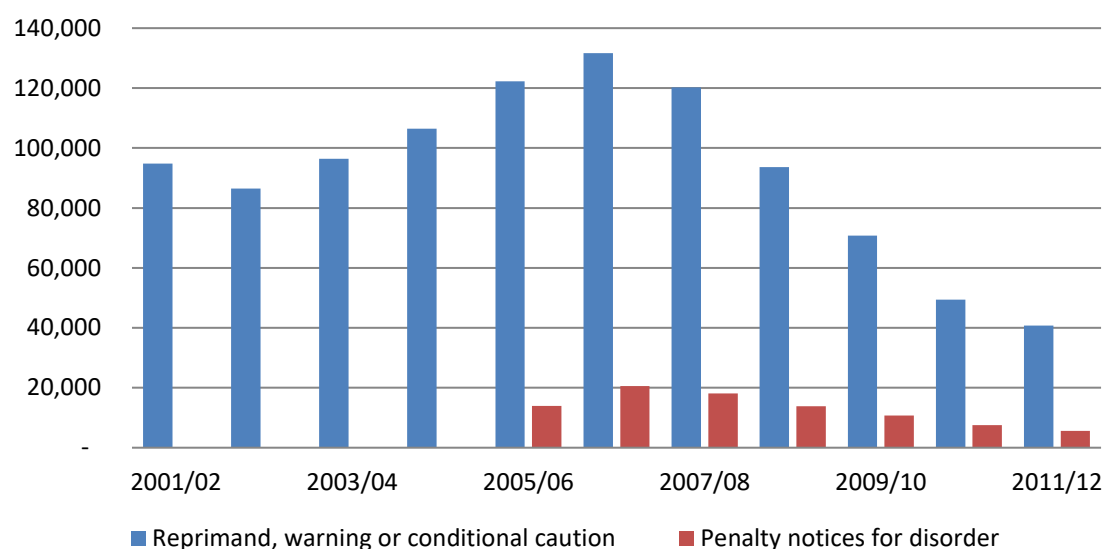
¹⁰⁵ A police caution is a formal warning that is given to a person admitting an offence as an alternative to prosecution.

¹⁰⁶ A juvenile's eligibility for a reprimand or warning under the scheme depended on the seriousness of the offence. For a first offence the police decision was limited to imposing either a reprimand, warning or charge. Only one reprimand was allowed for a first offence and generally one warning, although a second warning could be imposed if the offence had been committed two years later.

¹⁰⁷ Kemp et al. 2002.

by juveniles.¹⁰⁸ The target was revised in 2007 to encourage the police to focus on more serious offences, and it was abandoned altogether in 2010.

Table 3: Reprimands, final warnings, conditional cautions and penalty notices for disorder for juveniles from 2001 to 2012.



The LAPSO Act 2012 abolished the final warning scheme and the police are no longer allowed to use PNDs for juveniles. Instead a simplified and more flexible approach has been adopted, with three main out-of-court disposals for juveniles. These include 'community resolution', 'youth cautions' and 'youth conditional cautions'.¹⁰⁹ The disposal decision for out-of-court penalties is to be based on the seriousness of the offence, the previous offending history and the likelihood of compliance - the views of the victim can also be taken into account. Community resolution involves an informal response after the juvenile has admitted the offence and agrees to participate in activity based on resolving the offence, including restorative justice. Youth cautions and youth conditional cautions are formal disposals that do not have to be used in a set order. On the contrary, there is no limit on the number of youth cautions or youth conditional cautions and these disposals can be imposed in cases where a juvenile has previously been convicted.

When imposing a youth caution the police are required to notify the YOT.¹¹⁰ In relation to the youth conditional caution the conditions that can be attached must have one or more of the following objectives: rehabilitation – to help modify the behaviour of the young offender, serve to reduce the likelihood of re-offending or help to reintegrate them into society; reparation – conditions which serve to repair the damage done either directly or indirectly by the young offender; and punishment – unpaid work or a financial penalty which punish the young person for their unlawful behaviour.

¹⁰⁸ See CPS 2002; Office for Criminal Justice Reform 2010; Morgan and Newburn 2012, p. 515.

¹⁰⁹ These new sanctions came into force in April 2013.

¹¹⁰ For a first youth caution the YOT will use their expertise to determine whether there is the need for an assessment and intervention. An assessment is required for second and subsequent youth cautions.

The police decide whether or not a youth caution or youth conditional caution is appropriate and these are issued by a police officer in the presence of the juvenile and their appropriate adult. A Crown prosecutor can also consider imposing a youth conditional caution as an alternative to court in cases where the young person has been charged. These disposals are formally recorded and may be cited in court if the young person reoffends in the future. Non-compliance with the conditions attached as part of the youth conditional caution may result in prosecution for the original offence. As the youth caution and youth conditional caution are intended to be used as an alternative to prosecution there are legal criteria which have to be met. In addition to admitting the offence, the police/CPS need to ensure that there is sufficient evidence to obtain a realistic prospect of conviction, and that it is not considered to be in the public interest to prosecute. There is no requirement for the young person to consent to receiving a youth caution, although such consent is required for the youth conditional caution.

II. INTERROGATIONS

A. Interrogations of juveniles in the pre-trial phase

1. Concept of interrogation: relevant definitions

Having set out a general outline of the juvenile justice system in England and Wales in the first part of this report, the second part will – first of all – examine more specifically definitions concerning the interrogation of juvenile suspects. The rules concerning the interrogation of suspects are the same for both adults and juveniles, although an appropriate adult is required in cases involving juveniles and other vulnerable suspects.

Arrest and detention

Once the police receive a report that a crime has been committed the usual response is to arrest a suspect, gather evidence and conduct an interrogation. It is at the end of the investigation that the police, or the CPS, decide whether or not the suspect should be charged. In the past, the position at common law had been that the police would first make their enquiries and an arrest was made immediately before a suspect was charged. With PACE granting the police time, facilities and powers to conduct interrogations the police station has now become the focal point of the investigation in many cases. This means that instead of the police gathering evidence before making an arrest, which could make the need for an interview redundant, the practice is to arrest early on so that the interrogation has become an essential part of the police investigation.¹¹¹ The process is the same for both adults and juveniles.

The interrogation

The police are allowed to detain suspects in order to question them. For the purpose of an interrogation PACE refers to the interview as: "...the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences which, under

¹¹¹ Section 37 of PACE requires that a custody officer shall determine whether there is sufficient evidence against a suspect to charge when first brought into custody. However, suspects tend to be detained on the basis that there needs to be an interrogation: Sanders et al. 2010.

paragraph 10.1, must be carried out under caution”.¹¹² Code C of PACE, paragraph 10.1, states that a person must be cautioned when there are grounds to suspect them of having committed an offence and before any questions are put to them. At the commencement of the interview, PACE provides that the suspect should be reminded of their right to remain silent and their continuing right to legal advice (Code C, paragraph 11.4). PACE also requires that the police must not interrogate juveniles, or adults with mental health problems, in the absence of an appropriate adult.

There are restrictions on the extent to which the police can use informal exchanges taking place between the police and a suspect as providing admissible evidence in court. In the case of *R. v. Absolam*¹¹³, for example, it was upheld by the Court of Appeal that the questioning of a suspect in the charging room by the custody officer did not amount to an interrogation, particularly as the suspect had not been read his rights prior to the questioning. Accordingly, the conviction was quashed. PACE requires that in cases where the police seek to rely on a significant statement or silence prior to police questioning, that this is put to the suspect at the commencement of the interrogation.¹¹⁴

In legal terms, in addition to establishing whether or not the suspect admits or denies the allegation, a key aim of the interrogation is to establish evidence of the suspect's thought processes at the relevant time (the *mens rea* of the offence). The interrogation is not, therefore, a 'search for the truth'. As Baldwin (1993, p. 327) explained, "the idea that police interviewing is, or is becoming, a neutral or objective search for truth cannot be sustained, because any interview inevitably involves exploring with a suspect the detail of allegations within a framework of the points that might at a later date need to be proved". Instead, interrogations need to be seen as mechanisms directed towards the 'construction of proof'. Or, as McConville et al. (1991, p. 79) put it, as "social encounters fashioned to confirm and legitimate a police narrative".

The police interrogation of a suspect, either adult or juvenile, is not mandatory, although the police seem to value the questioning of suspects, particularly when an admission is forthcoming. This is because the police are primarily judged on how successful they are in 'catching criminals' and bringing them to justice.¹¹⁵ If there is a clear and reliable confession this can dispense with the need for the police to secure any additional evidence. An admission made during the interrogation can also lead to a quick 'guilty' plea at court or the recording of an out-of-court disposal (where an acceptance of guilt is required). In addition, during the interview the police can seek to obtain information about other offences and/or offenders.

The police cannot interrogate juveniles below the age of 10 years. If the police have responded to complaints concerning the behaviour of a child below the criminal age of responsibility they can refer them to the YOT or to the local authority social services department for a child safety order to be considered.

¹¹² Code C, para. 11.1A.

¹¹³ [1988] 88 Cr App Rep 332.

¹¹⁴ Code C, para. 11.4. A significant statement is one which appears capable of being used in evidence against the suspect, an admission of guilt, for example. A significant silence is a failure or refusal to answer a question or answer satisfactorily when under caution.

¹¹⁵ Sanders et al. 2010, p. 257.

'Voluntary' interviews

There is a difference between interrogations depending on whether or not an adult or juvenile suspect has been arrested. In cases where the police believe it is not necessary to arrest a suspect in order to conduct an interview, the interrogation can take place on a 'voluntary' basis, but with the same legal protections applying. That is, the suspect has to be cautioned prior to the commencement of the interrogation, advised that they have the right to independent legal advice, and be told that they are free to leave the interview, unless they are subsequently arrested.¹¹⁶ Juvenile suspects are also required to have an appropriate adult present in the interrogation. The 'voluntary' interview can take place at the juvenile's home, their place of education, or in a police station – but outside of the custody suite, generally in an interview room with equipment available to facilitate the recording of the interview.

Mediation and diversion

When responding to minor offences or anti-social behaviour the police can impose a 'community resolution'; delivered with or without the use of restorative justice techniques. This is an informal response in cases where the offence is admitted but the police do not need to conduct an interrogation. There are other forms of diversion from court where juvenile suspects are required to be interrogated by the police. As noted above in relation to the youth caution and youth conditional caution, for example, there are legal requirements which have to be met, such as an admission and sufficient evidence to obtain a realistic prospect of conviction, which criteria can be satisfied if the offence is admitted during the interrogation.¹¹⁷

2. The timing of interrogations and the pre-charge process

There is no precise moment when the suspect has to be interrogated but this usually takes place following an arrest and prior to the charging decision. Having made an arrest and detained a suspect in custody, the police can either interrogate them straight away, or otherwise gather evidence before conducting an interview. In cases where the police gather evidence prior to the interrogation, there can be long delays with suspects waiting in police cells. Indeed, during the first period of detention suspects were found to be held in police custody on average for nine hours; almost seven and-a-half hours for juvenile suspects.¹¹⁸ Having interrogated the suspect, the police, or the CPS in relation to more serious and/or complex cases, then have to decide whether to continue with their investigations or decide that there is sufficient evidence to make a charging decision.¹¹⁹ In some cases the suspect can be required to return to the police station at a later date while police enquiries are on-

¹¹⁶ Code C, para. 3.21. If arrested, the police officer has to bring a suspect before a custody officer.

¹¹⁷ The other criterion involves the public interest test.

¹¹⁸ Further analysis of the dataset was used to identify the average time juveniles were held in police custody during the first detention period. In addition, a sub-sample of 300 custody records were analysed in one police station where additional information had been extracted manually. The records included all suspects who had requested legal advice and the average time from arrest to the interrogation was 7 hours and 37 minutes. It should be noted that there are longer delays in cases where there is an interview and legal advice has been requested. See Kemp et al. 2012, p. 740.

¹¹⁹ If the case requires a CPS decision, there is a delay while the evidence is faxed, or otherwise sent electronically, to the prosecutor who makes the charging decision.

going. If the suspect is charged, they will either be bailed to attend court at a future date, or otherwise held in police custody until the next available court date.

3. Authorities empowered to conduct interrogations

The police are empowered to carry out the interrogation of juvenile suspects. Police investigators can become specialised when dealing with certain types of offences, such as homicide, sexual offences, robbery and drugs. There is police training provided in relation to interrogation techniques, but there is no requirement for police investigators to be specialists when dealing with juvenile suspects. Neither prosecutors nor the judiciary are competent authorities to carry out the interrogation of either adult or juvenile suspects within an adversarial system of justice.

There is no formal way of regularly assessing the capacity of juvenile suspects to be interrogated. However, if the police are concerned that a suspect has a mental health problem, or are told that this might be the case, then certain action has to be taken. In relation to adult suspects this involves arranging for an appropriate adult to be involved, a protection which is already required for juveniles. The police must also contact a doctor, usually a forensic medical examiner (FME),¹²⁰ who will carry out an assessment, although a psychiatrist can act as the FME when mental health issues are involved.¹²¹ The FME will advise the police about whether the suspect is well enough to be questioned about the offence, and also to remain at the police station. In some cases the FME will arrange for a mental health assessment, in which case a psychiatrist would evaluate whether the suspect is fit to be interviewed, or if they require admission to hospital, or to be released from custody.

There are no special rules for the interrogation of 'extra-vulnerable' juveniles. Indeed, this category does not exist in England and Wales, although in addition to their young age, a juvenile with mental health problems would be considered as particularly vulnerable. As mentioned before, if there are concerns over the mental health of the suspect then the police will arrange for a medical assessment to ascertain whether they are fit to be interviewed and/or held in detention. There is no role within the adversarial criminal justice system for medical experts, social workers, or YOT members to be involved in the interrogation of a juvenile suspect, unless acting as their appropriate adult.

4. General issues concerning safeguards

There are legal safeguards for those arrested and questioned by the police, including the right to publicly funded legal advice, the right to remain silent, to have an appropriate adult and, if required, an interpreter.

The right to legal assistance

Under section 58(1) of PACE all suspects have an 'unequivocal' right to consult with a solicitor free of charge and privately at any time. There is also the associated requirement that the police inform suspects of this right (Code C, para. 3.1).¹²² The suspect is first advised

¹²⁰ Qualified doctors are available on 'call' to provide assistance to the police. When called to the police station they are referred to as the 'FME'.

¹²¹ Ventress et al. 2008.

¹²² Suspects also have a right to independent legal advice when interrogated by the police on a 'voluntary' basis and, if requested, the police have to arrange for a legal adviser to attend (Code C, para. 11.2).

of their right to free and independent legal advice when booked into police custody (Code C para 3.1(ii)). If legal advice is requested the police telephone through to the Defence Solicitor Call-Centre, which routes the request for legal advice. In case of certain summary offences the request is routed through to CDS (Criminal Defence Services) Direct, which is a call-centre providing telephone-only advice.¹²³ However, the suspect is entitled to a solicitor of their choice being present if the police conduct an interrogation in such cases.

The suspect can delay their request for legal advice until just prior to the police interrogation, when they are reminded by the police of their right to legal advice.¹²⁴ If legal advice is requested at this stage, the interrogation has to be delayed while the solicitor is contacted and either speaks to the suspect over the telephone and/or attends at the police station to be present during the interrogation. If legal advice is requested the suspect can speak to an adviser over the telephone or, as is more common practice, the legal adviser will wait until the interrogation before advising their client at the police station.

Suspects have the right to a lawyer being present during the interrogation, although there may be occasions when a lawyer decides not to attend and instead provides advice over the telephone. Legal advisers are encouraged to be present during the interrogation when dealing with juveniles or other vulnerable suspects, even when dealing with minor matters which have not been routed to CDS Direct.¹²⁵

When attending at the police station the solicitor will first meet with the police investigators to discuss details of the alleged offence and, if provided, to consider what evidence disclosed by the police against their client.¹²⁶ The solicitor will then meet with their client privately to discuss the strength of the prosecution case and to take their client's instructions before advising them of what to say in the interrogation.¹²⁷ A difficulty may arise for the solicitor if the appropriate adult also wants to be present during this private consultation. Of particular concern will be issues of confidentiality, with the consultation being subject to 'legal privilege' but with the appropriate adult not being subject to these rules.¹²⁸ It is a matter for the solicitor and their client to decide whether the appropriate adult should be present; PACE requires that a suspect should have the opportunity to consult privately with a solicitor in the absence of the appropriate adult.¹²⁹

¹²³ Detainees who have been arrested after having breached their bail conditions and also those arrested on warrant, having failed to attend a court hearing are also routed to CDS Direct.

¹²⁴ Code C, para. 11.2.

¹²⁵ Ashford et al. 2006, p. 160. There is also higher fixed fee payable for legal advisers who attend at the station and provide face-to-face legal advice.

¹²⁶ Under the Criminal Procedure and Investigations Act 1996 the police investigator is not under an obligation to reveal to the defence any or part of the evidence prior to the interrogation

¹²⁷ Code C para. 3.1(ii) provides suspects with the right to consult privately with a solicitor while held in custody.

¹²⁸ 'Legal privilege' protects confidential discussions between a solicitor and their client, provided that the communication is for the purpose of seeking and receiving legal advice.

¹²⁹ Code C, Note 1E.

The solicitor's role in the police station is to protect and advance the legal rights of their client.¹³⁰ This means that the solicitor is to ensure that the interrogation is conducted fairly and in accordance with PACE and the Codes of Practice, which seek to protect the suspect from unnecessary pressure and distress. PACE recognises that on occasions this may require the solicitor to give advice that has the effect of the client avoiding giving evidence which could strengthen the prosecution case. In addition, it is recognised that the solicitor is allowed to intervene in order to seek clarification; or to challenge an improper question to their client, or the manner in which it is put; to advise their client not to reply to particular questions; or if they wish to give their client further legal advice.¹³¹

From the defence perspective, as stressed in legal literature, the solicitor is required to intervene in the interrogation to ensure that the police do not use complex language, or ploys designed to elicit responses through leading questions, multiple questions and/or hypothetical questions. The solicitor also needs to be alert to any signs that the young suspect may be susceptible to any veiled threat by the police, which might not be immediately obvious, and to ensure that the interrogation is not conducted in an oppressive manner. In addition, the objective for the solicitor in the interview is to ensure that the young suspect 'does his best in the interview', irrespective of whether or not they respond to questions put by the police, and to keep an accurate record of the interview.¹³²

If legal advice has been requested, and the solicitor wishes to attend, the police can only proceed with an interrogation in their absence if an urgent interview is required and a delay could involve a serious risk or harm to evidence, persons or property. This has to be authorised by an officer of at least the rank of superintendent.¹³³ Under the same provision, PACE also allows the police to proceed with an interrogation in cases where a solicitor, including a duty solicitor, has agreed to attend but they are delayed and awaiting their arrival would cause unreasonable delay to the process of investigation. In addition, if legal advice has been requested but the suspect changes their mind about wanting a solicitor present in the interrogation, the interview can proceed if authorised by an inspector. The inspector's involvement is to ensure that the suspect has not been put under pressure by the police not to have a solicitor. After having spoken to the suspect and the solicitor requested, if satisfied that the suspect has made an informed decision, the inspector can authorise that the interrogation continues without a solicitor present.¹³⁴

Suspects are entitled to request a solicitor but having legal advice is never mandatory. If juveniles decline legal advice there is no power to make an *ex officio* appointment. Indeed, while the appropriate adult can request a solicitor to attend at the police station on the suspect's behalf, it is the suspect who has to make the decision about whether or not to

¹³⁰ There is no legal source which outlines the responsibility of legal advisers in the police station. However, there are comprehensive and practical guides which cover the solicitors' role, including defending young people. See Ashford et al. 2006.

¹³¹ Code C, Note 6D.

¹³² See Ashford et al. 2006, pp. 164 to 165; Cape 2011.

¹³³ PACE, section 58 and Code C, para. 6.6.

¹³⁴ Revised Code C, para. 6.6.D(i).

have legal advice. It is interesting to reflect that children as young as 10 to 13 years old are responsible for deciding whether or not to have a solicitor, even though at such a young age they are unlikely to understand the role of a solicitor and how this could assist them when in police custody.

Legal Aid

Legal aid is available to provide free access to legal advice for all suspects held in police custody. Access to legal aid is structured around suspects either requesting their own nominated solicitor¹³⁵ or otherwise requesting the services of the duty solicitor. The duty solicitor scheme comprises local defence practitioners who take their turn on a rota to provide legal advice at the police station. Those providing cover under the duty solicitor scheme have to be experienced criminal practitioners. There is no special qualification required for defence solicitors when dealing with juveniles, although some practitioners tend to specialise in such cases by regularly dealing with young clients.¹³⁶

Right to remain silent

Under common law, suspects interrogated by the police had a right to remain silent without any adverse inferences later being drawn in court. In the late 1980s, there were concerns raised by the police that the right to silence was adversely impacting on the conviction rate.¹³⁷ While this issue was examined by the Royal Commission on Criminal Justice (1993), with the majority agreeing that the suspect's right to remain silent should continue,¹³⁸ this decision was ignored by government, which went on to legislate the Criminal Justice and Public Order Act 1994.¹³⁹ The court can now draw adverse inferences from silence if defendants seek to rely on evidence in court, which they did not mention to the police when questioned. Accordingly, while suspects can refuse to answer some or all of the questions put by the police in the interrogation, solicitors have to advise their clients about the potential for adverse inferences to be drawn later on in court.

It is an important decision, therefore, for solicitors to advise their clients about whether or not to respond to some or all of the police questions put to them in the interrogation. The advice will depend, to some extent, on what evidence the police disclose to the defence prior to the interview. However, as noted above, the police are under no obligation to disclose evidence to the defence prior to the interrogation. Nevertheless, in the case of *R. v. Imran and Hussain*,¹⁴⁰ it was noted that if the police disclose little or nothing to the solicitor, then it is likely that the suspect will be advised to remain silent. While the police are encouraged to provide some evidence to the defence, in the above case Lord Bingham of Cornhill stated: "It is totally wrong to submit that a defendant should be prevented from

¹³⁵ The choice of a publicly funded solicitor is restricted to those working for solicitors' firms who hold a General Criminal Contract with the Legal Aid Agency.

¹³⁶ While there is no form of specialisation in juvenile criminal law, there is a Children Law Accreditation Scheme ran by the Law Society. This scheme includes practitioners who deal with family and public law cases, rather than criminal cases involving juveniles.

¹³⁷ Sanders et al. 2010, p. 272. There was no clear evidence of an impact on the conviction rate and in fact, very few people exercised their right to silence; of those who did, they often later answered questions and even went on to plead guilty. See McConville and Hodgson 1993; Leng 1993.

¹³⁸ Recommendations 82 and 83.

¹³⁹ See sections 34, 36 and 37.

¹⁴⁰ [1997] Crim L.R. 754.

lying by being presented with the whole of the evidence against him prior to the interview.” This point-of-view was later re-affirmed in the case of *Thirwell v R*.¹⁴¹

If the police do not disclose to the solicitor whether or not they have any evidence, the solicitor might assume that there is no evidence and, on the basis of protecting their client from self-incrimination, they are likely to advise them to remain silent. The solicitor's advice of what the client should say in the police interview is also informed by other factors. This includes not only whether or not the police have any evidence, but also the admissibility of such evidence, and whether or not their client has a defence and/or alibi.¹⁴² With solicitors being aware of how clients, particularly vulnerable clients, can get drawn into answering questions during an interrogation, there is the option for them prior to the interrogation to assist the juvenile by preparing a written statement, setting out the issues the defence wishes to raise, and this can then be read out by the lawyer during the interrogation.

While suspects have the right to remain silent during an interrogation, they do not have the right to absent themselves from police questioning. If the suspect, or their solicitor, advises the police that they will remain silent, it is common practice for the police to go through the process of asking questions, as this will assist in constructing the prosecution case. The suspect can refuse to answer all questions or otherwise be selective in refusing to answer one or more questions.

In cases where the suspect has remained silent during the interview, and there is insufficient evidence to charge, the police decision has to be to take ‘no further action’. Accordingly, there can be a positive outcome for the suspect in making no comment. However, in cases where the police have strong evidence, but this is not disclosed to the solicitor, the advice to remain silent during the interrogation can be detrimental to the client. At court, for example, adverse inferences can be drawn if the suspect seeks to rely on evidence which was not mentioned during the interrogation. In addition, without an admission the suspect is not eligible for an out-of-court disposal, which can be used in some cases as an alternative to prosecution. It is not known to what extent suspects are advised of these potential consequences when advised by their solicitor to remain silent in the police interview.

Within an adversarial system of justice there is a presumption of innocence and the burden of proof is on the prosecution to prove that the suspect was guilty ‘beyond reasonable doubt’.¹⁴³ There is also the related ‘privilege against self-incrimination’ which has given suspects the right to remain silent during police interrogations. While there is a relationship between the two, the concepts are not synonymous.

Police caution

As soon as an officer has reasonable grounds to suspect that someone has committed an offence, they should be cautioned and any questioning following the caution must be conducted as an official interrogation with the attendant safeguards set out in PACE. If this is not done, the interrogation may be inadmissible as evidence in court. Only in exceptional circumstances, may the police conduct an ‘urgent’ interview without cautioning the suspect, but the admissibility of the evidence can be questioned later on in court. Before the commencement of an interrogation the police are required to caution the suspect.¹⁴⁴ The

¹⁴¹ [2002] EWCA Crim. 286.

¹⁴² See Cape 2011.

¹⁴³ See Blackstock et al. 2014.

¹⁴⁴ Code C, para. 11.1A.

only difference for juveniles when cautioning suspects is that this has to be made in the physical presence of the appropriate adult. If they are not present when the suspect is first cautioned then this has to be repeated in their presence before the start of the interrogation.¹⁴⁵

The police investigator has to caution a suspect before asking them questions about an offence on each occasion the suspect is interrogated.¹⁴⁶ The caution has to be given verbally by a police officer in the following terms, "You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence".¹⁴⁷ As the caution includes the qualification to the right to remain silent, this can make it difficult for people – especially juveniles – to understand. In a study undertaken by Clare et al. (1998), for example, they found that only a small proportion of a group of students and the 'general population' were able to explain all three sentences of the caution correctly. While another group of police officers had a better understanding of the caution, only half of this group were able to explain correctly the three sentences comprising the caution. If a suspect does not appear to understand the caution in the interrogation, the person giving it is required to explain it in their own words.¹⁴⁸

Presence of appropriate adult

It is mandatory for a juvenile suspect to have an appropriate adult present when they are interrogated by the police (Code C, para. 11.1A). When they are first brought into custody the custody officer must seek to ascertain from the suspect the identity of the person responsible for their welfare. They then have to inform them as soon as practicable of the arrest and why the suspect has been detained.¹⁴⁹ If the appropriate adult is not the juvenile's parent or guardian, they too must be informed of the basis on which the suspect has been detained and asked to attend at the station in order to see them.¹⁵⁰ With long delays often occurring between the police gathering evidence and the interrogation, the practice of appropriate adults, as noted above, seems to be to wait until the police are ready to proceed before attending at the station.

PACE requires that appropriate adults must be present when juveniles are interrogated but this right can be waived if an urgent interview is required. As noted above in relation to the involvement of a solicitor, the police can proceed with an interrogation in the absence of an appropriate adult if waiting for them could involve a serious risk or harm to evidence, persons or property.¹⁵¹ An officer of the rank of superintendent or above has to authorise that the interrogation can proceed in the absence of an appropriate adult. If the circumstances which require an urgent interview are no longer relevant then the interview will cease.

There are situations where a person is unable to act as the appropriate adult because this could be in conflict with the interests of the child. This would include circumstances where the appropriate adult is involved as a victim or other witness in the alleged offence,

¹⁴⁵ Code C, paras. 10.11A and 10.12.

¹⁴⁶ Code C, para. 10.

¹⁴⁷ Code C, para. 10.5.

¹⁴⁸ Code C, Note 10D.

¹⁴⁹ Code C, para. 3.13.

¹⁵⁰ Code C, para. 3.15.

¹⁵¹ Code C, para. 11.15.

or where the juvenile has admitted the offence to them.¹⁵² In addition, a juvenile's parent should not be asked as the appropriate adult if they are estranged and the child expressly objects to their presence. While intended as a safeguard for juveniles, parent(s) acting as an appropriate adult can undermine other legal protections for young suspects. In particular, it seems that a commonly held view among suspects is that legal advisers are the main cause of delays.¹⁵³ Accordingly, a parent or guardian might discourage the juvenile from having a solicitor if they perceive that this would lead to a delay. In addition, it can be difficult for a lawyer to maintain the suspect's right to remain silent, if the parent is angry at their child's perceived wrongdoing and is urging them to tell the police what happened. This situation helps to highlight the potential conflict in the roles of the appropriate adult and the legal adviser.

If an appropriate adult is present at an interrogation PACE requires that they are to be informed that they are not expected to act simply as an observer and their presence is to advise the juvenile being questioned; to observe that the interview is being conducted properly and fairly; and to facilitate communication with the juvenile being interviewed.¹⁵⁴ As noted above, research has shown that appropriate adults are of variable effectiveness, but this is perhaps not surprising given that parents and family members are generally untrained and do not always appreciate the legal significance of police questions and procedures.

The right to interpretation and translation

When a suspect is first brought into police custody the police are responsible for making sure appropriate arrangements are in place for accessing suitably qualified interpreters for people who are deaf or do not understand English.¹⁵⁵ If the suspect is unable to understand English the custody officer will contact 'Language Line' in order to book them into custody. This provides a three-way conversation over the telephone that enables the custody sergeant to ask the suspect questions, which the interpreter then translates, and the suspect's response to the interpreter is then fed back to the custody officer.¹⁵⁶ Any notices received by the suspect, including the notice of their legal rights, has to be translated into the language spoken by them.¹⁵⁷ When the suspect is to be interrogated by the police it is the responsibility of the police to arrange for an interpreter to be present in the interview.¹⁵⁸

In cases where a legal adviser is involved, they have to decide whether the interpreter arranged by the police for the interrogation can also act as the interpreter when they take instructions and advise their client. The Law Society's Practice Note (2012) suggests that in

¹⁵² Code C, Note 1B. In addition, in cases where a social worker, or other YOT member, has been appointed as the appropriate adult, but the juvenile had earlier admitted the offence, another appropriate adult should be appointed in the interest of fairness.

¹⁵³ Blackstock et al. 2014; Kemp 2013a.

¹⁵⁴ Code C, para. 11.17.

¹⁵⁵ Code C, para. 13.1. See Blackstock et al 2014, p. 148 for details of interpretation and translation services in England and Wales.

¹⁵⁶ Language Line has available interpreters who can cover over 200 different languages.

¹⁵⁷ Code C, Note 3B.

¹⁵⁸ If possible, interpreters should be drawn from the National Register of Public Service Interpreters (NRPSI), the Council for the Advancement of Communication with Deaf People (CACDP) or the Directory of British Sign Language/English (Code C, para. 13.1).

most cases the interpreter arranged by the police will be suitable for this purpose, although there are certain circumstances in which this may not be so.¹⁵⁹ The Practice Note also highlights the importance for solicitors to confirm with the interpreter that they are bound by their Code of Conduct so as to ensure the confidentiality of the communication between the solicitor and their client during the private consultation.

5. Carrying out the interrogation

Whenever a suspect is interrogated by the police they must be informed of the nature of the offence about which they are to be questioned.¹⁶⁰ The juvenile does not have a right to access the police case file but, as noted above when considering the suspect's right to remain silent during the interrogation, the police investigators first meet with the solicitor and discuss what evidence they have in the case. With the police being under no formal obligation to disclose all, or even some, of the evidence, the extent to what information is disclosed by the police is likely to influence what is said by the suspect in the interrogation.

Recording police interrogations

PACE requires that an accurate record is made of the police interview. In police custody suites, where suspects are routinely interviewed, the interrogations are tape recorded or, increasingly, digitally recorded. The recorded interview needs to include the place of the interview, the time it begins and ends, the time the record was made (if different), any breaks in the interview and the names of all those present.¹⁶¹ At the end of the interview there is a master tape (or disc), which is sealed with a label which has to be signed by the maker of the tape; those present in the interrogation are also invited to sign the label.¹⁶² In the case of 'voluntary' interviews taking place outside of police custody, if no recording equipment is available contemporaneous handwritten notes can be made of the interrogation.¹⁶³ These have to be signed by the officer making the record and those present are also invited to check whether the notes provide an accurate record and, if so, they are invited to sign the interview to that effect.¹⁶⁴

There are duplicate copies made of the interrogation, one copy of which is kept by the police and the other is available for the defence on request once instructed by the suspect. The record of the interrogation is not transcribed unless the suspect is charged with an offence. If charged, the police will then provide a written summary of the interrogation, made after listening to the tape and this, together with the taped interview (if not provided before) will be included as part of the evidence disclosed to the defence.

Questions and interrogation techniques

There are no specific rules for the police when posing questions to juvenile suspects or on specific interrogation techniques. The presumption of innocence is connected to the right of a suspect to remain silent and not to incriminate themselves. In the case of *Saunders v.*

¹⁵⁹ This includes, for example, where the interpreter is known to the suspect, or if the offences are of a particularly sensitive and/or serious nature.

¹⁶⁰ Code C, para. 11.1A.

¹⁶¹ See Code C, Note 11.7.

¹⁶² Code C, paras. 11.7(b), 11.9 and 11.11.

¹⁶³ Code C, para. 11.7(c).

¹⁶⁴ Code C, para. 11.9 and 11.11.

*United Kingdom*¹⁶⁵ the ECtHR held that if methods of coercion or oppression are used to procure self-incriminating statements, which are subsequently used in a prosecution, the suspect's right to a fair trial under art. 6 ECHR will have been breached. The extent to which police questioning could be oppressive or unfair was considered above when examining the role of solicitors in the police interrogation.

There are certain types of offences where the police might explore with the juvenile during the interrogation family and/or cultural background issues. In cases involving sexual abuse, for example, it may be pertinent for the police to ask certain questions about such issues if relevant to the offence(s) being investigated. Similarly, when dealing with offences of violence arising out of family relationships, the police may ask questions in order to understand better the family and/or cultural issues involved.

Duration of interrogations

There are no rules which restrict the length of time a suspect can be interrogated, or how often. Although, due to the vulnerability of juvenile suspects, long and/or repeated interrogations could later be challenged at court as having been oppressive. While there is no rule which states that a juvenile cannot be interviewed at night-time it seems that this does not often happen, for two main reasons. First, PACE requires that in any 24-hour period of time the suspect has a continuous period of at least eight hours of rest, free from any questioning, which is usually during the night-time.¹⁶⁶ Second, and as noted above, appropriate adults are not always available during the night, which means that the interview has to be delayed.

As noted above, in addition to the police investigators and the juvenile suspect being involved in the interrogation, an appropriate adult must also be present and, if requested, a legal adviser, unless an urgent interview is required. If a juvenile suspect is interviewed in the absence of an appropriate adult and subsequently charged, it is a matter for the defence lawyer at court to consider whether the grounds for an emergency interview existed and whether the requisite authority was obtained.¹⁶⁷ If not, the admissibility of the police interrogation, or part thereof, could be challenged. There is no PACE requirement for a solicitor to be present in the interrogation, although if legal advice is requested a solicitor is likely to be involved.

6. Outputs of the interrogation

The statements obtained by the police during the police interrogation can be used to inform the charging decision. In particular, what is said, or not said, could determine whether the police/CPS decide to take no further action, impose an out-of-court penalty or charge. The main purpose of the statements obtained by the police is that these can be admitted as evidence at court. If the juvenile defendant at court pleads 'not guilty', then the statements can be used in examination and cross-examination. As noted above, if the defendant remained silent during the interrogation, then adverse inferences could be drawn if they seek to rely on evidence which was available at the time of the police interrogation but not commented upon. If the juvenile is charged and remanded in custody by the court, then the statements could also be used either by the prosecution or the defence in a bail application.

¹⁶⁵ [1997] 23 EHRR 313 (68-9).

¹⁶⁶ Code C, para. 12.2.

¹⁶⁷ More generally, Section 78 of PACE gives the courts discretion to exclude from a criminal trial evidence which has been obtained unfairly.

Confessions

When suspects make a confession during the interrogation, the statement can assist when seeking to achieve maximum credit for an early guilty plea at court. The guidance set down by the Sentencing Guidelines Council (2007) recommends that there should be a one-third discount if there is a guilty plea entered at the first opportunity.¹⁶⁸ However, in the case of *Caley and Others v. R.*¹⁶⁹ the Court of Appeal considered a number of cases which involved discounts for guilty pleas. It was held that an admission in the interrogation is a mitigating factor and not an 'indication of guilty plea' for the purpose of gaining credit. The first reasonable opportunity for an admission to be made in order to achieve the maximum credit was held to be at defendant's appearance in the magistrates' court when a plea is invited, rather than a confession made in the police station. A confession during the interrogation is also relevant when considering the potential imposition for an out-of-court disposal, as this requires the offence to be admitted, without which the suspect could instead be charged.

7. Remedies and sanctions

The main remedy available for a breach of PACE safeguards (for all suspects) is to challenge the admissibility of the evidence obtained during the interrogation in court. It is evident that the provisions of the 1984 PACE Act are law, and have to be followed, but a breach of the Act is not a criminal offence. It also seems that there has been no sanction imposed in a civil case arising out of a breach of PACE. The only possible formal sanction against the police for a breach of PACE is disciplinary action. However, as Zander (2012, p. 713) points out: "...such proceedings are as rare as hen's teeth'.

So far as the PACE Codes of Practice are concerned, section 67(11) of the Act provides a sanction for a breach of the Codes in that the court can take this into account when determining whether or not the statements should be admissible in court. Breaches of the Codes have led to the ruling of evidence as being inadmissible, as well as convictions being overturned. Convictions have been quashed, for example, where the defendant was not told required information, not given access to a solicitor, not cautioned, or an appropriate adult was not involved when required. It is a matter for the court to determine whether a breach of the Code is condoned or otherwise used to exclude evidence or overturn convictions. The Notes for Guidance included in the Codes of Practice are not technically part of the Codes but these are often referred to by the courts when considering whether or not there has been a breach of the Code. The Notes, therefore, are for the guidance of not only police officers but also others, including judges.

Dissemination of interrogations

The interrogation of the juvenile cannot generally be disseminated outside of the actors involved in the criminal proceedings. While there is a general rule that the administration of justice must be done in public, there is an exception where proceedings involve juveniles. In the youth court, for example, proceedings are held in private, although section 47 of Children and Young Persons Act 1933 includes a specific exception for representatives from

¹⁶⁸ This then reduces to one-quarter discount after the trial date is set and one-tenth discount for a guilty plea just prior to, or after the trial has commenced. It is expected that these guidelines will be followed unless there is a good reason to depart from them. If not, this can be the basis of an appeal.

¹⁶⁹ [2012] EWCA Crim. 2821.

the media to be present. While the media are entitled to observe youth court proceedings they are prohibited from publishing the name, address or school or any other matter that is likely to identify a person under 18 as being concerned in the proceedings (section 49 of the 1933 Act).¹⁷⁰ Crown Court proceedings which involve juveniles are held in open court. There is no automatic restriction on reporting proceedings in the Crown Court, but the court may direct that the same restrictions apply as in the youth court.

8. Locations of interrogations

The interrogation of juvenile suspects is generally conducted in the police station where they are detained. Instead of booking suspects into custody who have attended for a pre-arranged appointment, the police are encouraged to interview them outside of the custody suite on a 'voluntary' basis. Special locations/facilities for the interrogation of juvenile suspects are not provided. However, there are special interview arrangements when taking a witness statement from a juvenile, particularly in sexual cases or where there was violence or neglect or a child has been abducted. In such cases the interviews are conducted by police officers or social workers, who have been trained to work with children and they can use a specially equipped room in order to record on video what children under the age of 17 have to tell them.

9. Interviewing juveniles as victims and witnesses

Guidance published by the Ministry of Justice (2011) considers preparing and planning for interviews with witnesses, decisions about whether or not to conduct an interview, and decisions about whether the interview should be video-recorded or whether it would be more appropriate for a written statement to be taken following the interview. Vulnerable witnesses are defined by section 16 of the Youth Justice and Criminal Evidence Act 1999 (as amended by the Coroners and Justice Act 2009). Children are defined as vulnerable by reason of their age.

When dealing with a child as a vulnerable witness, the guidance suggests that they should have the support of someone who is independent of the police. Similar to the role of the appropriate adult, this support could be provided by a friend or relative. The guidance also states that specialist training should be developed to interview witnesses with particular needs, including child witnesses, traumatised witnesses and witnesses with a mental disorder or learning disability; including working with intermediaries. While juvenile suspects can experience similar problems there is no requirement for specialist training of police investigators in relation to their interrogations. A video-recorded interview of a child witness can serve as evidence gathering for use in the police investigation and in criminal proceedings, particularly in relation to allegations of child abuse and sexual offences. The police can video-record the interrogation of a juvenile suspect but such facilities are not generally available in police stations and so instead the interviews tend to be taped or digitally recorded.

There can be an application made to court for 'special measures' to assist vulnerable witnesses, either prosecution or the defence, to give evidence in court. The 'special measures' are a series of provisions that help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. These include screens being made available in the court which shield the witness

¹⁷⁰ These automatic reporting restrictions may be lifted in certain circumstances, such as when it might be in the public interest to do so.

from the defendant when giving evidence. There can also be set up a live link, which enables a witness to give evidence during the trial from outside the courtroom, through a televised link. In cases involving sexual offences or intimidation by someone other than the accused, a vulnerable witness can give evidence in private, with members of the public and the press being required to leave the court (except for one named person to represent the press). Where there is a video-recorded interview with a vulnerable witness before the trial, this could be admitted by the court as the witness's evidence-in-chief. The court can also appoint an intermediary to deal with examination of a witness, to assist them in giving their evidence at court. The intermediary is allowed to explain questions or answers so far as is necessary to enable them to be understood by the witness or the questioner, but without changing the substance of the evidence. It is the defence lawyer who provides such assistance for juvenile defendants at court.

The protections for interviewing child witnesses are wide-ranging and detailed. This includes both the video-recording of interviews and requiring a multi-agency approach to be adopted when dealing with complex and sensitive issues.¹⁷¹ Such protections are not generally extended to the interrogations of juvenile suspects.

III. CONCLUSIONS

There is an ambivalence within juvenile justice as a system that is designed to punish wrongdoing, but also to protect the vulnerable. In recent times, the emphasis has moved further away from welfare and towards punishment, in line with the wider law-and-order rhetoric of successive governments. The boundaries between those committing offences and those needing protection, is often unclear and overlapping. There is, however, a complex system of support and intervention from Youth Offending Teams who work with young people who are at risk of criminal offending, as well as those who have been charged and convicted. A range of measures has also been introduced, which increases parental responsibility for the actions of children, including a mixture of criminal and civil law orders.

From the initial investigation through to the courtroom hearing, the criminal process must balance sometimes competing interests. When the suspect is a young person, their status as a vulnerable person whose psychological and moral culpability is very different from that of an adult, means that their status as an accused must be understood differently from that of an adult. Procedure in the Youth Court is less formal than in the adult court and the language and appearance of prosecutors, lawyer and judges is adapted to be less intimidating. A range of diversion measures has been introduced, diverting juveniles away from prosecution as well as imprisonment. However, penal policy is often political, rather than being based on evidence as to the importance of age, development and moral culpability of young people.

There are also special protections required when detaining and questioning a juvenile suspect in police custody – principally, the requirement to have an appropriate adult present. The presence of an independent adult to ensure that the young person understands the process and to act as an additional check on police behaviour is an important safeguard. However, whilst the appropriate adult may be a trained and experienced criminal justice professional, they may also be a volunteer (with varying degrees of training) or simply the suspect's parent. This means that there will inevitably be inconsistency in the kinds of safeguarding that the appropriate adult can provide.

¹⁷¹ Ministry of Justice 2011.

Although many police officers are trained to interview juvenile suspects, this is not mandatory. Overall, the detention procedure for juveniles (who may be as young as ten years old) does not differ from that of adults in significant ways. This contrasts with the care taken over young witnesses, whose vulnerability defines their reliability and credibility more strongly than is the case for juvenile suspects. Balancing the welfare, support and crime prevention needs of young people, with the interests of society in seeing sanctions administered to those who have harmed the victims of crime, is a difficult equation.

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